



CITY COUNCIL STAFF REPORT

MEETING DATE: July 21, 2004

Agenda Item # 1

Approved By:

BAHS Director

Submitted By:

City Manager

Santa Clara County Cities Association's (SCCCA) Joint Economic Development Policy Committee.

RECOMMENDED ACTION(S): Approve the SCCCA's formation of a new standing committee called the Joint Economic Development Policy Committee (JEDPC); and ratify the appointment of Mayor Kennedy to represent the City on the JEDPC.

EXECUTIVE SUMMARY:

The Santa Clara County Cities Association is recommending the formation of the JEDPC which would be a new standing committee of the SCCCA. The JEDPC would initially consist of 15 city and 15 business representatives. The attached memo from SCCCA explains the purpose and role of the JEDPC. In essence, the JEDPC would be advisory in nature and represents an effort to address economic development issues on a regional basis. Joint Venture Silicon Valley and the Silicon Valley Manufacturing Group have initially agreed to support and take part in the JEDPC. The first meeting of the JEDPC is in September 2004.

Mayor Kennedy served on this Ad Hoc Committee with San Jose Council Members Dave Cortese and Cupertino Council Member Richard Lowenthal. Mayor Kennedy is requesting that the Council authorize him to continue serving on the JEDPC.

FISCAL IMPACT: None



CITY COUNCIL STAFF REPORT
MEETING DATE: JULY 21, 2004

**ACCEPTANCE OF THE CITY OF MORGAN HILL
POLICE FACILITY PROJECT**

RECOMMENDED ACTION(S):

1. Accept as complete the Morgan Hill Police Facility Project in the final amount of \$1,813,000.
2. Direct the City Clerk to prepare and file a Notice of Completion with the County Recorder's office.

EXECUTIVE SUMMARY:

The contract for the Morgan Hill Police Facility Project was awarded to Stevelle Construction Co. Inc. by the City Council at their December 17, 2003, meeting in the amount of \$1,699,000 with a Change Order Contingency in the amount of \$114,000 for a total project cost of \$1,813,000. The project resulted in construction of the tenant improvements needed to convert an industrial building into the City of Morgan Hill's New Police Facility. The costs of the tenant improvements were guaranteed by the Nicholson Company per the purchase agreement for the building.

Twenty eight contract change orders were issued for a net deduct of (\$46,963.) during construction of the project. The final contract amount with Stevelle Construction Co. Inc. was \$1,657,066. The work has been completed in accordance with the plans and specifications. The project Change Order contingency and the savings from Change Orders were used to complete other work by separate vendors or sub-contractors directly with the Police Department, thus streamlining the procurement process. The change order contingency was always intended to be used for work completed by separate vendors.

FISCAL IMPACT:

This project at award of contract had a total budget (including design) of \$2,213,000. The project was funded with Police Impact Fees and the sale of the Library land to the Agency. The acceptance of the facility will trigger the provisions of the purchase agreement to acquire the building within 30 days.

Agenda Item # 2

Prepared By:

Sr. Project Manager

Approved By:

BAHS Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: July 21, 2004

AMENDMENT TO AGREEMENT FOR LAND USE

PLANNING CONSULTING SERVICES

RECOMMENDED ACTION:

Approve amendment to contract.

EXECUTIVE SUMMARY:

On April 7, 2004, the City Council approved modification of the Scope of Work for the Urban Limit Line (Greenbelt) Study to incorporate an Implementation Program. Modifications to the City's contract with Moore Iacofono Goltsman (MIG) included shifting some work tasks to City staff and a contract planner. The proposed amendment would modify the Agreement for contract planning services with Kenneth Schreiber to continue his assistance with that project. The amendment would extend the term of the Agreement to June 30, 2005 and add \$70,000 to cover anticipated costs to complete the project. Funding for this contract uses funds from an unfilled Senior Planner position.

FISCAL IMPACT:

All of the funding in the contract amendment has been appropriated by the City Council in the 2004-05 City Budget. No additional appropriation is necessary.

Agenda Item # 3

Prepared By:

Planning Manager

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: JULY 21, 2004

FINAL MAP APPROVAL FOR TUSCANY MEADOWS (TRACT 9500)

RECOMMENDED ACTION(S):

- 1) Approve the final map, subdivision agreement and improvement plans
- 2) Authorize the City Manager to sign the Subdivision Improvement Agreement on behalf of the City
- 3) Authorize the recordation of the map and the Subdivision Improvement Agreement following recordation of the Development Improvement Agreement

EXECUTIVE SUMMARY:

Tract 9500 is a 15 lot subdivision located on the west side of Hill Road between Shafer Avenue and Katybeth Way (see attached location map). The developer has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on February 11, 2003.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provision with a Title Company to provide the City with the required fees, insurance and bonds prior to recordation of the Final Map.

FISCAL IMPACT:

Development review for this project is from development processing fees.

Agenda Item # 4

Prepared By:

Senior Civil Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT
MEETING DATE: JULY 21, 2004

***LOT LINE ADJUSTMENT PARCEL MAP APPROVAL FOR
SOUTH VALLEY DEVELOPERS, INC.***

RECOMMENDED ACTION(S):

- 1) Approve the lot line adjustment parcel map, including the abandonment of a storm drain easement and reciprocal ingress, egress and public service easement on the property.
- 2) Authorize the recordation of the map.

EXECUTIVE SUMMARY:

The property affected by the commercial lot line adjustment parcel map is part of the Gateway Center development located at the intersection of Monterey Road and Cochrane Road (see attached location diagram). The map shows the elimination of both a storm drain easement and a reciprocal ingress, egress and public service easement on the property. Due to changes to the site development plan the easements are no longer needed. Therefore, staff recommends that the City Council approve the abandonment of these easements.

The developer has furnished the City with the necessary documents to complete the processing of the lot line adjustment parcel map and has made provisions with a Title Company to record said map.

FISCAL IMPACT:

Development review for this project is from development processing fees.

Agenda Item #5

Prepared By:

Senior Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: JULY 21, 2004

AWARD OF PROFESSIONAL SERVICES CONTRACT FOR CONSTRUCTION INSPECTION SERVICES FOR THE 2003-04 STREET RESURFACING PROGRAM

RECOMMENDED ACTION(S):

1. Authorize the City Manager to execute a consultant agreement for Construction Inspection Services for the 2003-04 Street Resurfacing Program with Harris and Associates for a cost not to exceed \$32,310.

EXECUTIVE SUMMARY: At its June 23, 2004 meeting Council awarded a Construction Contract to Silcon Valley Paving Inc. for the 2003-04 Street Resurfacing Program. The project cost is \$557,205. Contract Inspection Services are needed for this project.

Harris and Associates have provided a proposal for Construction Inspection Services for the 2003-04 Street Resurfacing Project for a cost not to exceed \$32,310. (See attached proposal) This costs equals approximately 5% of the construction cost. This percentage is typical for these services. Staff has worked with Harris and Associates and finds their services professional and competent. Staff recommends award of this professional services contract for Construction Inspection Services to Harris and Associates.

FISCAL IMPACT: There is sufficient funding in the CIP Project #519L04 to fund the proposed contract for Construction Inspection Services.

Agenda Item #6

Prepared By:

**Deputy Director Public
Works**

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: July 21, 2004

AWARD OF CONTRACT FOR ANNUAL ASPHALT MAINTENANCE

RECOMMENDED ACTION(S):

Award contract to Granite Construction Company for the Annual Asphalt Maintenance in the amount of \$37,600.

EXECUTIVE SUMMARY:

Request for Proposals were sent to several vendors and advertised in the newspaper. The proposal opening was held July 8, 2004. The proposals received are listed below.

Granite Construction Company	\$37,600
Wattis Construction Company	\$38,784
Granite Rock-Pavex Construction Division	\$51,800
Duran & Venables, Inc.	\$81,400

The contractor will repair localized pavement failure at various locations throughout the city of Morgan Hill. Staff recommends approval of awarding this maintenance contract to Granite Construction Company.

FISCAL IMPACT: The total contract cost for the project is \$41,360 which includes a 10% contingency. Funding exists in the FY 2004-05 Streets budget.

Agenda Item # 7

Prepared By:

Management Analyst

Approved By:

Department Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: July 21, 2004

APPROVE PURCHASE ORDER FOR THE REPAIR AND REPLACEMENT OF METAL BEAM GUARDRAILS

RECOMMENDED ACTION(S):

Approve purchase order to Chavez Fence Company for the repair and replacement of metal beam guardrails in the amount of \$22,150.

EXECUTIVE SUMMARY:

Request for Proposals were sent to several vendors and advertised in the newspaper. The proposal opening was held June 29, 2004. The proposals received are listed below.

Chavez Fence Company	\$22,150
Central Fence Company	\$27,980

The contractor will repair or replace metal beam guardrails at six locations in the City of Morgan Hill. Staff recommends approval of awarding this contract to Chavez Fence Company.

FISCAL IMPACT: Funding exists in the FY 2004-05 Streets budget.

Agenda Item # 8

Prepared By:

Management Analyst

Approved By:

Department Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT
MEETING DATE: JULY 21, 2004

Agenda Item #9

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1685, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1487, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-97-22: SPRING – MALONE/FILIPOWICZ TO ALLOW FOR A ONE YEAR EXTENSION OF TIME FOR A SINGLE CUSTOM LOT BUILDING ALLOTMENT RECEIVED IN THE 1998-99 RDCS COMPETITION. (APN 767-53-012)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1685, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On July 7, 2004, the City Council Introduced Ordinance No. 1685, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1685

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1487, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-97-22: SPRING – MALONE/FILIPOWICZ TO ALLOW FOR A ONE YEAR EXTENSION OF TIME FOR A SINGLE CUSTOM LOT BUILDING ALLOTMENT RECEIVED IN THE 1998-99 RDCS COMPETITION. (APN 767-53-012)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. the Planning Commission pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded 6 building allotments for FY 1999-2000 to application **MP-97-22: Spring-Malone**; and

SECTION 4. The City Council hereby finds that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 5. EXCEPTION TO LOSS OF BUILDING ALLOCATION. The project applicant has, in a timely manner, submitted necessary planning applications to pursue development. Based on the findings required in Section 18.78.125 of the Municipal Code, the City Council hereby approves the development agreement amendment to allow for a one-year Exception of Loss of Building Allotment for the single Measure P unit, extending the deadline to commence construction from June 30, 2004 to June 30, 2005.

SECTION 6. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 7. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 7th Day of July 2004, and was finally adopted at a regular

meeting of said Council on the 21st Day of July 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1685, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21st Day of July 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT
MEETING DATE: JULY 21, 2004

Agenda Item # 10

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1686, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO DEVELOPMENT AGREEMENT, DA 03-11 TO INCORPORATE CHANGES IN THE ALLOCATIONS AND THE PHASING OF THE PROJECT FOR APPLICATION MP 02-07: CORY-SAN PEDRO PARTNERS. (APN 817-11-061)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1686, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On July 7, 2004, the City Council Introduced Ordinance No. 1686, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1686, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO DEVELOPMENT AGREEMENT, DA 03-11 TO INCORPORATE CHANGES IN THE ALLOCATIONS AND THE PHASING OF THE PROJECT FOR APPLICATION MP 02-07: CORY-SAN PEDRO PARTNERS. (APN 817-11-061)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code, Resolution No. 03-17a & b, adopted May 27, 2003, and Resolution No. 04-35 and 04-36 adopted March 23, 2004 has awarded allotments to that certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP 02-07: Cory-San Pedro Partners	32 Single-Family Homes

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the Residential Development Agreement and Development Proposal approved by this ordinance are compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 7th Day of July 2004, and was finally adopted at a regular meeting of said Council on the 21st Day of July 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1686, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21st Day of July 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT
MEETING DATE: JULY 21, 2004

Agenda Item # 11

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1688, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE PRECISE DEVELOPMENT PLAN APPROVED UNDER ORDINANCE NO. 1546, NEW SERIES, FOR THE TENNANT STATION SHOPPING CENTER LOCATED IN THE PUD DISTRICT ON THE SOUTHEAST CORNER OF THE INTERSECTION OF MONTEREY ROAD AND TENNANT AVENUE. (APN's 817-06-039, 040 & 41)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1688, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On July 7, 2004, the City Council Introduced Ordinance No. 1688, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

No budget adjustment required.

ORDINANCE NO. 1688, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE PRECISE DEVELOPMENT PLAN APPROVED UNDER ORDINANCE NO. 1546, NEW SERIES, FOR THE TENNANT STATION SHOPPING CENTER LOCATED IN THE PUD DISTRICT ON THE SOUTHEAST CORNER OF THE INTERSECTION OF MONTEREY ROAD AND TENNANT AVENUE. (APN's 817-06-039, 040 & 41)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The proposed zoning amendment hereby amends Ordinance No. 1546, New Series, and is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. The PUD amendment is exempt pursuant to CEQA section 15332-Infill development

SECTION 4. The City Council hereby approves an amendment to the precise development plan adopted as Figure I as part of Ordinance No. 1546, New Series. The approved amendment is shown on the attached Exhibit "A" dated May 17, 2004, entitled Safeway Morgan Hill, CA by Craig and Grant Architects. The scope and limitations of the proposed amendment are shown in the attached Exhibit "A". All other aspects of the development plan approved as part of Ordinance No. 1546, New Series, shall remain in affect and are not superceded by this ordinance.

SECTION 5. The Council finds that the changes incorporated by Exhibit "A" are necessary to comply with the minimum zoning requirements as set forth in Chapter 18.30 of the Municipal Code (Zoning Code).

SECTION 6. The amendment to precise development plan shall include the following:

- a. Pavers at specific cross over locations (pedestrian crosswalks)
- b. 24 foot drive aisle (curb to curb) and a 6-inch curb along the drive aisle
- c. Tree location(s), height, type to be decided with the ARB
- d. Shrub planters located between – not in front of – columns
- e. Height of metal buttresses and/or trellis to be negotiated with ARB
- f. Directional signs placed for clear location of all businesses within the center.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 7th Day of July 2004, and was finally adopted at a regular meeting of said Council on the 21st Day of July 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1688, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21st Day of July 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk

CITY OF MORGAN HILL
SPECIAL CITY COUNCIL MEETING
MINUTES – JULY 5, 2004

CALL TO ORDER

Mayor Kennedy called the special meeting to order at 8:00 a.m.

ROLL CALL ATTENDANCE

Present: Council Members Carr, Chang, Sellers, Tate and Mayor Kennedy
Absent: Council Member Chang (excused)

DECLARATION OF POSTING OF AGENDA

The meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

CLOSED SESSIONS:

Mayor Kennedy announced the below listed closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Legal Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	2

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor adjourned the meeting to Closed Session at 8:03 a.m.

RECONVENE

Mayor Kennedy reconvened the meeting at 11:59 a.m.

CLOSED SESSION ANNOUNCEMENT

Mayor Kennedy announced that no reportable action was taken in closed session.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 12:02 p.m.

MINUTES PREPARED BY:

IRMA TORREZ, City Clerk

**CITY OF MORGAN HILL
CITY COUNCIL SPECIAL MEETING
MINUTES – JULY 7, 2004**

CALL TO ORDER

Mayor Kennedy called the special meeting to order at 4:30 p.m.

ROLL CALL ATTENDANCE

Present: Council Members Carr, Sellers, Tate and Mayor Kennedy
Council Member Chang (excused from closed session only)

DECLARATION OF POSTING OF AGENDA

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council Action

CLOSED SESSIONS:

Mayor Kennedy announced the below listed closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Legal Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	2

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Kennedy opened the Closed Session items to public comment. No comment were offered.

ADJOURN TO CLOSED SESSION

Mayor Kennedy adjourned the meeting to Closed Session at 4:32 p.m.

RECONVENE

Mayor Kennedy reconvened the meeting at 5:00 p.m.

CLOSED SESSION ANNOUNCEMENT

Mayor Kennedy announced that no reportable action was taken in closed session.

PUBLIC COMMENT

Mayor Kennedy opened the floor to public comment for items not appearing on this evening's agenda.

John Dossetti thanked the Council and Public Works staff for the work being undertaken at the Monterey Road underpass.

No further comments were offered.

City Council Action

OTHER BUSINESS:

1. PRESENTATION OF COUNCIL SUBCOMMITTEE REPORT ON THE RESULTS OF THE INVESTIGATION INTO THE SURVEILLANCE OF THE CITY MANAGER

Mayor Kennedy stated that the matter before the Council is of the up most sensitivity and that the impact on the carriers and personal lives of all concerned can be enormous. He indicated that the Council must be fair, respectful, responsible and display integrity/compassion for everyone involved. He identified the ground rules for the conduct of this evening's meeting. He indicated that the Council will hear the report on the investigation from the Council subcommittee consisting of Council Members Carr and Sellers followed by questions. The subcommittee and the attorneys will then respond to questions. He stated that time will be provided for the respondents: Mr. Tichinin, Council Member Chang and her attorney. He noted that the Council has allocated one hour for this evening's report. He stated that it will be the Council's intention to call a special meeting on July 14, 2004 to discuss possible actions. Therefore, the Council does not intend to take action this evening other than what is mentioned on the agenda.

Mayor Pro Tempore Sellers addressed the logistics of the report prepared by the subcommittee. He said that when the Council was asked by its senior staff to try to discern what took place in a trip that the City Manager took on behalf of the City, the Council unanimously (5-0) agreed that it should undertake an investigation. All five Council members unanimously appointed two council members to investigate the situation. The Council appointed him and Council Member Carr to the subcommittee to undertake the task. The subcommittee strongly felt that the public needed to know the situation as soon as possible. He said that it was unfortunate that the "as soon as possible" was before the Fourth of July holiday. Had the report not been released at that time, there would be a delay of up to two weeks and that the subcommittee did not believe that it was appropriate to sit on the information for that period of time. This was the reason for releasing the information on July 2, 2004. He stated that the goal of the report was to present the facts as clearly, concisely and accurately as possible. The subcommittee understood that there would be an opportunity for individuals to respond. The subcommittee is encouraging responses in written format or oral responses. The subcommittee is recommending a separate meeting be scheduled on July 14 that would be dedicated to dealing with this issue. This is an attempt, on the Council's part, to have all facts known and all issues before it. The information will allow the Council to make an appropriate decision. He indicated that the subcommittee undertook this task with a heavy heart. The subcommittee did not know where the investigation would go at the onset. As it turned out, it involved individuals considered to be friends, individuals respected in the community; the most popular colleague and an individual who have been icons in the community for many years. He said that it was a sense of duty that drove the Council and a responsibility to its employees and the community that drove

the subcommittee to present the facts. He said that the subcommittee looks forward to receiving additional information this evening and to discuss with the Council future actions that might be taken.

Council Member Carr thanked Mayor Pro Tempore Sellers for all of the hard work that he put into this task the past five months of the investigation. He said that staff has always made themselves accessible to the subcommittee. He said that this is one of the most difficult tasks that he has had to undertake during his four year tenure as a Council Member and four years as a School Board Member. He said that this was a serious issue, one that he undertook with all seriousness. The investigation led was one that was fact based. The subcommittee wanted to find out the facts and to present the facts back to the Council so that it can make decisions based on facts. The subcommittee did not write the report as a narrative or with emotion. As elected officials, the subcommittee felt that it was the Council's greatest duty and obligation to maintain public trust. The report and the discussions to be undertaken and any actions to be taken are in the effort to maintain public trust. He stated that the public's business/involvement needs to be conducted in the highest of ethical standards. It is his hope that the results of the investigation, the report, and any action(s) the Council takes will be based upon this standard. Tonight, the subcommittee presents the report that was presented to the Council on Friday, July 2, 2004. He noted that the report contains several recommended actions for the Council to consider; the first of which is to accept the subcommittee's report on the results of its investigation through July 2, 2004. He said that the report does not come to any conclusions as to the facts of the matter, or agreeing/disagreeing with the facts of the matter. The subcommittee is requesting that the Council accept the report.

Mayor Pro Tempore Sellers addressed how the subcommittee undertook to prepare the report and some of the factual resources relied upon, particularly the interviews conducted with key players. He indicated that the Council retained the services of an investigator. There were also conversations with Council colleagues as well as documents and e-mails, and other resources that are public record. He stated that the subcommittee did not start with any conclusions or any thoughts in mind. What the subcommittee found at the end was the realization that Mr. Tichinin, following admission, undertook to retain an investigator, who was not licensed, to follow City Manager Tewes to Huntington Beach. That investigator surveiled Mr. Tewes during his trip. Initially, Mr. Tichinin did not respond truthfully when he was queried about the investigator. Mr. Tichinin subsequently responded that he did retain an investigator but did not believe that there were any laws broken. He noted that City Manger Tewes made a public announcement that he would be on a trip and that he would be missing a Council meeting in order to attend a conference. However, the details of his trip, where he was going to stay and the plane to be taken were not available to the public. The subcommittee felt that this information was significant as it narrowly defined who had access to this information. He indicated that Council Member Chang did ask specific questions about this trip, therefore, had this specific information. He stated that City Manager Tewes was initially approached by League of California Cities staff who was contacted by the hotel staff, indicating that someone specifically requested that they be located in a room adjacent to Mr. Tewes in "order to keep an eye on him." The hotel staff alerted League officials who in turn alerted City Manager Tewes. This was done by e-mail. City Manager Tewes received the information, 24-hours later. As well on the trip, a phone call was made to City Manager Tewes' room asking for someone who was not in the room. There was an order placed for two servings of hot chocolate. He said that the significance of this is the fact that hotel protocol is such that hotel staff does not accept orders for room service that does not come from the room to which it is to be delivered. The fact that it was two orders

and not one indicates that there was an attempt to create an appearance of something that might not have been the case. This is why the information was included in the report. The subcommittee felt that this information was germane to the investigation. City Manager Tewes noticed that there was an individual who appeared to be a guest at the hotel who was carrying camera equipment. Instead of taking a direct route to the elevators, City Manager Tewes stepped out of the way slightly. The individual passed by and attempted to maintain a distant contact with City Manager Tewes as he checked out. Upon returning to Morgan Hill, the first thing the City Manager did was to think about who might want to follow him. He said that he was not just thinking about his professional involvement but thought about his personal life. He wondered whether there any workers compensation claims or any other things that could possibly cause this situation. After much consideration and discussions with his family, City Manager Tewes concluded that in fact that the surveillance was likely due to his professional status. City Manager Tewes decided that it would be appropriate to ask his employers, the City Council, to conduct an investigation. He indicated that the Council followed with the investigation.

Council Member Carr said that in the process of the investigation, the Council hired private investigator to track down the person that followed City Manager Tewes. The investigator conducted interviews with hotel staff. The subcommittee was eventually able to learn the identity of the individual who had followed City Manager Tewes and to get him on video tape to confirm that he was the individual who surveiled City Manager Tewes. The subcommittee eventually asked the City investigator to initiate contact with the individual. Upon doing so, the individual had somehow been tipped off about the subcommittee's investigation. The individual knew who the City's investigator was and was expecting him. There were conversations held over 3-4 meetings where the individual was unwilling to reveal who had hired him other than the fact that it was an attorney from Morgan Hill. He stated that from this information, the subcommittee began a process of trying to narrow down the list of suspects of who this person might be. The subcommittee came to a point where it suspected Mr. Tichinin. He stated that Mr. Tichinin was initially approached by Mayor Pro Tempore Sellers and denied any involvement. Later, Council Member Chang suggested several times to Mayor Pro Tempore Sellers that he contact Mr. Tichinin again about the issue. Upon doing so, Mr. Tichinin confirmed that he had caused to be hired the investigator that followed City Manager Tewes. He indicated that he received a phone call from Council Member Chang before this admission in which she told him that she did not have any involvement in the hiring of the individual, that she did not know who hired the individual, and that she was not involved in any manner. He said that after Mr. Tichinin came forward with the fact that he had hired the individual, he received a second phone call from Council Member Chang in which she states that she had to lie to him the week before as Mr. Tichinin was her attorney at the time. Therefore, she could not say anything. From this, the subcommittee put together information as different pieces of factual information and observations came forth. He said that Council Member Chang may not have known when the City Manager was going to be surveiled but that she knew that Mr. Tichinin was going to proceed with the surveillance, knowing about the City Manager's trip plans for this particular weekend. When the subcommittee began this investigation, the initial question asked that evening was whether there were any members on the Council who knew any information about the matter at hand. If there was, that individual(s) come forward and disclose the information. The disclosure need not be in front of the entire Council and that it can be done in private. He noted that no one stepped forward, not even Council Member Chang. He indicated that the subcommittee undertook a four month (approximately) investigation on behalf of the employees of the Council and on behalf of the citizens of Morgan Hill, costing the City of Morgan Hill a sum of money in this investigative effort. He noted that the Council

was not aided by its colleague in this effort. He stated that the results of the investigation are before the Council in the report. He said that the subcommittee has taken the opportunity to provide the Council recommendations on several possible actions that could be taken as a result of the facts of the report.

Mayor Kennedy stated that he would agree to accept the subcommittee's report and the results of their investigation. It was his understanding that by accepting the report, the Council is accepting the information reported and not making a judgment decision. He noted that item 2 contained in the report suggests consideration of the adoption of appropriate recommendations. He inquired as to the Council's subcommittee recommendation with respect to holding a special meeting to consider the recommendations.

Council Member Carr said that the third item being recommended is that the Council call a special meeting on July 14 in order to consider the recommendations and any actions that the Council may want to take as a result of the report. It was his belief that the Council would be taking action on the report. Once the Council calls for the special meeting, the Council can move forward with any actions deemed appropriate. He felt that the Council can review the recommendations this evening and that if there are any items that can be eliminated that they be identified. If there is any preliminary direction to staff in order to carry out any actions that may be discussed next week, he recommended that it be given this evening.

Mayor Kennedy inquired whether anyone on the Council has a working relationship with either of the respondents; volunteer or paid (past or present).

Council Member Tate noted that all Council members have a relationship with Council Member Chang.

Mayor Pro Tempore Sellers said that all Council members also have a relationship with Mr. Tichinin, working on a variety of events such as IDI, civic and political activities. He suspects that Mr. Tichinin has been involved with a variety of political activities, including political donations over the years. He stated that the respondents are respected icons in the community. Therefore, their involvement with the Council is significant.

Linda McPharlin, representing Council Member Chang, indicated that she distributed a written response. She indicated that it is a preliminary response because of the time constraints. She read the response into the record.

Mayor Kennedy opened the floor to public comment.

Lori Barke inquired whether there has been a confirmation of the alleged affair. If so, who were the investigating parties? If there was not an affair, she inquired as to the credentials Council Members Carr and Sellers have as investigators? She stated that council members live in a fish bowl and that they are held up to the highest standards. She indicated that there have been rumors that there has been some suspicion of luncheons between the City Attorney and City Manager. She requested that the Council find out if there is a confirmation of the alleged affair.

Ken Kamei stated that he had a brief opportunity to read the report. He noted that the report was based on some interviews. He inquired whether the interviews were conducted under oath or whether they were merely conversations. He noted that one of the possible outcomes or actions articulated was to accept the report with no further action to be taken. He inquired whether the possible actions listed were ones with no hierarchy in mind or whether they were merely an array of options being presented for the Council to choose from. If so, he felt that this should so be stated. He referred to item 4g regarding possible legal action. He said that there is a conclusion with this particular option such that there is an assumption that Council Member Chang was aware of the surveillance. He felt that the assumption was something that needs to be determined and that the Council needs to come to this conclusion first. He inquired whether action is being postponed to July 14.

Mayor Kennedy indicated that the Council would discuss this evening whether action would be postponed to July 14.

Tom Magas stated that he finds it coincidental that the two main opponents to the Council's failed and most recent attempt efforts to bring in auto mall revenues to Morgan Hill are now the main targets of alleged improprieties.

Susan Bernardini noted that Mayor Kennedy asked the question as to what special relationship the Council members have to the respondent. She felt that in the spirit of full disclosure, each council member who has received a monetary political contribution from Mr. Tichinin needs to disclose how much and when. She also felt that each and every principal needs to be identified that Mr. Tichinin represents. She stated that a question that has not been answered is who hired Mr. Tichinin if it was not Council Member Chang. She said that individuals interested in the Main-Vierra project would like to know who Howard Vierra is. She felt that individuals need to know where pressure is being placed and by whom for land use development in the City. She stated that whether or not an affair took place was irrelevant as no one needs to know. She felt that the only conclusion that can be reached is that a person can come forward and threaten, coerce, extort or embarrass individuals who do not agree with them. She stated that this is unconscionable.

John Sorci stated that he hears a lot of things on a daily basis about lot of different individuals at his barbershop. He stated that he did not hear about this issue from anyone on the City Council. He said that the comments do not come from one specific individual but that it filters throughout the town.

No further comments were offered.

Mayor Kennedy indicated that the Council received a letter from Peter Kutras, Jr., Santa Clara County executive and resident of Morgan Hill. He read the letter received into the record.

Mayor Pro Tempore Sellers thanked individuals for their comments, indicating that one of the goals this evening was to add to the knowledge base. He said that the Council would make every effort to answer the questions raised this evening. He said that the subcommittee does not consider itself as investigators; thus the reason for hiring investigators. It was the Council's goal to present the facts given to the subcommittee. The subcommittee was a vessel through which the facts might be presented to the public. He said that interviews were not conducted under oath and that there was no hierarchy of items given in

the list presented. The subcommittee merely laid out a set of options. He disclosed that Mr. Tichinin and he have known each other for quite a few years. Mr. Tichinin served as his campaign treasurer at one point and that he donated to his past campaigns. He stated that he declined to participate in the Vierra matter early on in the process once he heard about the land use being considered. He thought that at some point in the future, it might be an area (base of El Toro) that he might want to consider for his family. Therefore, when the matter came before the public, he stated that it would be inappropriate for him to participate in the discussions and declined participation. He stated that the subcommittee focused its efforts on the facts. He said that there was one question raised by Council Member Chang's attorney regarding the consideration of this matter in public session, noting that the Council spent a lot of time discussing what would be appropriate as far as how best to provide an opportunity for full disclosure on the part of the individuals being named in the report. He requested that the City's special counsel respond to the process that was taken and the opportunities for future discussions.

Marguerite Leoni, special counsel, indicated that the Council is a public body. Because of the public's right to know, the Council has been operating through a subcommittee. She indicated that not even the entire Council was aware of the conclusions/results of the subcommittee until the report went out to the public. She stated that this matter could not be dealt with until it became public. She indicated that the subjects of the report were notified and provided with copies of the report before it was made public. The subjects were invited to make written responses and to respond this evening to help the Council understand the facts, making sure that the public knows all facts, even those that have not been discovered by the subcommittee. She noted that the Council is considering scheduling a special meeting that will allow additional opportunity to respond. She stated that due process is being offered in these proceedings as broadly as possible. However, these matters had to become public before the due process could be offered as these are matters of public interest.

Council Member Tate thanked Council Member Chang and Ms. McPharlin for providing a response this evening. He did not believe that the Council was here to make a decision this evening. The Council was here on a fact finding mission and to receive all facts. He stated his disappointment that Mr. Tichinin and/or his attorney were not able to add to the record this evening as the Council would like to receive as much of the facts as possible. He said that the Council will consider Ms. McPharlin's letter on the matter. It is his hope that the Council will receive information from Mr. Tichinin that can be considered.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Accepted** the Subcommittee's Report on the Results of their Investigation through July 2, 2004. The motion carried unanimously (5-0).*

Council Member Carr noted that there was another issue that was raised by Ms. McPharlin and a member of the public as far as the investigation into the rumor of a relationship between staff. He said that this is something that the Council has been dealing with for a while. He indicated that the Council has asked members of the staff involved as to the relationship, stating that both have denied a relationship. The Council has asked both Council Member Chang and Mr. Tichinin if they have any evidence to support the rumor and that no evidence has been offered to support the rumored relationship. Mr. Tichinin was not able to provide evidence that any decisions/actions the Council has taken have been affected by the rumor of the relationship.

Mayor Pro Tempore Sellers said that the staff members involved have repeatedly and adamantly denied any involvement. He felt that due process needs to be taken.

Mayor Pro Tempore Sellers clarified that it was a goal of the subcommittee for the Council to consider adopting some recommendations. Should the Council decide that it wants to adopt any of the recommendations; the Council should schedule a meeting to do so.

Action: *Council Member Tate made a motion, seconded by Council Member Carr, to **Schedule** a special meeting on July 14, 2004 to consider adoption of appropriate recommendations or to take actions on the recommendations.*

Mayor Pro Tempore Sellers clarified that a separate meeting would be held where this would be the sole item on the agenda. The subcommittee would report any new information, incorporating any other information submitted. He said that the Council could consider possible actions, if any. He indicated that the list of possible actions was not an exhausted list. The items listed were ones brought to the subcommittee's attention.

Council Member Carr clarified that the action items presented on the list had no hierarchy implied. They are merely a gambit of possible actions.

Council Member Chang stated that she may have a conflict because she is a part of the matter. She indicated that she was told that she could not participate in any of the closed sessions relating to this matter. She said that her attorney received notice from the City late Friday afternoon. She indicated that she received a call from City staff stating that a special meeting was scheduled for July 5 at 8 a.m., a holiday, at the Police station. She was advised by Mayor Kennedy to contact Council Member Carr about the closed session. She advised that her attorney could not be present at the meeting. Therefore, the one closed session item was removed. She was then advised that the second closed session concerned her but that they could not stop her from attending. If she attended the meeting, it was indicated that the Council would have to change the scope of discussion. She said that she was not sure where she stands as far as the closed sessions are concerned as she was advised she had a conflict. Therefore, she could not attend the closed sessions or was told that it was felt that she had a conflict. She indicated that the Council did not advise her as to what the closed sessions were about. She stated that she was shocked to see the report and felt that she should have been given the opportunity to verify the information. It was her belief that she has a conflict at this time on the entire item.

Ms. Leoni indicated that special counsel has presented a memorandum on the conflict issue to the Council which Council Member Chang has every right to see. She stated that special counsel has also referred the issue to Council Member Chang's personal attorney on at least one occasion in writing. She stated that Council Member Chang is able to see the advice provided to the Council and that it is strongly recommended that she consult with her attorney on this matter. She clarified that Council Member Chang was specifically invited to attend today's closed session.

Council Member Chang stated that she was advised not to attend closed sessions for quite a while. She requested that whenever a closed session is held on this matter, that special counsel discuss the closed

session with her attorney. She would be able to make a decision or judgment thereafter. She stated that she would abstain from voting on this item.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously **Agreed** to reconsider both prior actions.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0-1 vote with Council Member Chang abstaining, **Accepted** the Subcommittee's Report on the Results of their Investigation through July 2, 2004.*

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0-1 vote with Council Member Chang abstaining, **Scheduled** a special meeting to be held on July 14, 2004 to consider adoption of appropriate recommendations or to take action on the recommendations.*

Regarding item 4, Mayor Pro Tempore Sellers recommended that the Council defer consideration of this item until July 14.

Council Member Tate requested that the subcommittee incorporate input received thus far.

Mayor Pro Tempore Sellers clarified that there are two different investigative items. He said that there are still a few loose ends that will take a while to consider. In terms of the basic items of the report, he indicated that all input will be incorporated into the report.

Action: *Council Member Tate made a motion, seconded by Council Member Carr, to **Discuss** the investigation at the next meeting. The motion carried 4-0-1 with Council Member Chang abstaining.*

ADJOURNMENT

There being no further business, Mayor Kennedy adjourned the meeting at 5:59 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK



CITY COUNCIL STAFF REPORT

MEETING DATE: July 21, 2004

ZA-04-07: DIGITAL – VENTURE PROFESSIONAL CENTER

RECOMMENDED ACTION(S):

1. Open/close Public Hearing
2. Continue Public Hearing

EXECUTIVE SUMMARY:

The applicant is requesting approval to modify the list of permitted uses for an approximate 9.4-acre area in the Morgan Hill Ranch Business Park to allow for medical/dental and general office uses. Approximately half of the site is currently developed with light industrial buildings. The remaining portion of the site is proposed for development of a 39,140-sf medical/dental office building and a 21,878-sf office building.

This item was scheduled to be reviewed by the Planning Commission on July 13, 2004. However, due to the accelerated processing of the application, the applicant did not feel they had enough time to adequately review and comment on the project traffic study. In addition, base assumptions of the traffic study are being re-evaluated by Staff at the applicant's request which could potentially alter the findings and mitigation measures of the report. As a result, the applicant requested to continue the item to the July 27 Commission meeting.

This item was duly noticed for the July 21 Council meeting. However, since the item was continued to the July 27 Commission meeting, Staff recommends that the Council open the public hearing and continue the item to the July 28 Council/RDA meeting.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing these applications.

Agenda Item # 14

Prepared By:

Associate Planner

Approved By:

Acting CDD Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: July 21, 2004

ZONING AMENDMENT APPLICATION ZA 04-02: COCHRANE- ASSISTED LIVING CENTER

RECOMMENDED ACTION(S):

1. Open/close Public Hearing
2. Approve Mitigated Negative Declaration
3. Waive the First and Second Reading of Ordinance
4. Introduce Ordinance

EXECUTIVE SUMMARY: A request to amend the precise development for the De Paul (formerly Saint Louise) Planned Unit Development PUD, located on the south side of Cochrane Rd. east of St. Louise Dr. and west of Mission View. The proposed amendment would modify the use and layout within the north east corner of the existing precise development plan and expand the existing PUD to include the 3.78 acre area (two parcels) located on the northwest corner of Cochrane Rd. and St. Louise Dr.

The hospital PUD was last amended in 1999 to incorporate a 100 unit assisted living facility within the north east corner of the hospital PUD (see attached ordinance 1425). The current application request would replace the previously approved 100 unit assisted living facility with a 40-70 unit congregate care facility and a 6050 sq. ft. childcare facility. The current application also enlarges the boundary of the existing PUD to incorporate an adjacent PUD which has not yet been defined. Within the PUD expansion area, the current application proposes a 94 unit assisted living facility and a 13,560 sq. ft. commercial office building. The inclusion of these parcels within the hospital PUD allows for a logical development pattern and insures uses that would be compatible and supportive of the hospital use. The uses approved within the current hospital PUD are to remain the same with the proposed addition of a childcare facility, congregate care facility and commercial office use.

Two alternative site plans have been submitted. The primary differences between the two plans are the size of the congregate care facility (40 vs. 70 units) and the location of the childcare facility. The applicant has developed the alternative plan due to the City's uncertainty of the alignment of Murphy Ave. The applicant does not want to locate the proposed childcare facility at the corner of Mission View and Cochrane Rd. if Mission View Dr. becomes an arterial. If Murphy Ave. aligns with Mission View and Mission View becomes an arterial, the applicant would prefer to construct additional (30 units) congregate units in the north east corner of the PUD and construct the child care on Saint Louise Dr. at the current location of the portable offices. If Murphy Ave. aligns with Saint Louise Dr., then the applicant would prefer to have the child care on the Mission View Dr. as shown on sheet A1.2.1.

Since either St. Louise Dr. or Mission View Dr. may become an arterial, the applicant would like to have both master plans approved at this time which will allow development to proceed regardless of the alignment. The Planning Commission considered the PUD amendment application on June 22 and voted 5-0 (Benich, Engles absent) to recommended approval of the request with a stated preference for the Alternative Master Site Plan shown on sheet A1.2.2. A copy of the Commission's staff report and draft minutes are attached for the Council's reference.

FISCAL IMPACT: No budget adjustment required.

Agenda Item # 15

Prepared By:

Senior Planner

Approved By:

Planning Manager

Submitted By:

City Manager

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A AN AMENDMENT TO THE PRECISE DEVELOPMENT PLAN FOR THE DE PAUL (FORMERLY SAINT LOUISE) HEALTH CENTER INCORPORATING UP TO A 70-UNIT CONGREGATE CARE FACILITY, 94 UNIT ASSISTED LIVING FACILITY, A 6,050 SQ. FT. CHILD CARE FACILITY AND A 13,560 SQ. FT. COMMERCIAL OFFICE BUILDING. (APNs 728-031-005, 006, 012 & 013)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

- SECTION 1.** AMENDING THE PLANNED UNIT DEVELOPMENT ZONING DISTRICT. This ordinance here by replaces the precise development plan established under Ordinance No. 1425, New Series.
- SECTION 2.** The incorporation of the congregate care, child care, and commercial office uses into the Planned Unit Development is consistent with the Zoning Ordinance and the General Plan since these uses are ancillary and supportive of the primary health center use within existing Planned Unit Development.
- SECTION 3.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 4.** An environmental assessment has been prepared for this zoning amendment and is deemed complete, correct and adequate in accordance with state and local environmental guidelines. Based upon said study, a Mitigated Negative Declaration will be filed.
- SECTION 5.** The City Council finds that the proposed amendment and expansion of the Planned Unit Development Overlay District is consistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code.
- SECTION 6.** The City Council hereby approves of the amended master development plan incorporating a 40-70 unit congregate care, a 94 unit assisted living facility, a 6,050 sq. ft. childcare facility and a 13,650 sq. ft. commercial office building as contained in that certain series of documents dated June 4, 2004, on file in the Community Development Department, entitled, "Morgan Hill Assisted Living Partners LLC" prepared by Hochhauser Blatter, Architecture and Planning.
- SECTION 7.** The City Council hereby approves of an amended PUD zoning boundary as shown on the attached Exhibit A.

SECTION 8. The approved development plan shall be subject to the following conditions:

1. If the childcare facility is located as shown in Alternative Master Site Plan (sheet A1.2.2 of June 4, 2004 submittal), the specific site plan, parking, circulation, landscaping and architecture shall be reviewed and approved by the Architectural Review Board. The Board has the authority to make final site plan modifications for the childcare facility if constructed within the "Future Ancillary Support Zone."

2. Development guidelines shall be provided for the entire PUD. The development guidelines shall be reviewed by the Architectural Review Board with final approval by the City Council prior to any Architectural and Site Review approvals granted for any development within the boundary of the PUD.

SECTION 8. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 9. Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 21st Day of July 2004, and was finally adopted at a regular meeting of said Council on the 18th Day of August 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 18th Day of August 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: *July 21, 2004*

PROTEST PRO-04-03: ANNEXATION ANX-03-01: HILL-GERA

RECOMMENDED ACTION(S):

1. Open/close Public Hearing.
2. Adopt a Resolution of Intent to Hold a Public Hearing on the "Protest Proceeding" at the regular Council meeting of August 18, 2004.

EXECUTIVE SUMMARY:

The applicant, Mr. George Gera, is requesting to annex five parcels, totaling approximately 19.50-acres, into the City of Morgan Hill. The site is located west of Hill Road, between Pear Drive and the southerly boundary of the El Dorado III subdivision. Inclusion of the parcels into the City limits would represent a logical adjustment of the boundary. The subject site is located within the City's Urban Service Boundary. Existing water and sewer lines are available within the site vicinity, and are of sufficient size to service future development of the site.

On May 27, 2003, the Planning Commission voted unanimously (7-0) to recommend approval of the annexation. The Commission included a series of Conditions of Approval to be completed prior to Council review of the proposal. These Conditions have all been satisfied, or will be shortly.

The annexation area consists of five parcels. Four of the parcels each contain approximately 2.5 acres, and the fifth parcel is nearly 10 acres in size. Pear Drive borders the 10-acre parcel to the south and Jean Court, a private drive, provides access to the four smaller parcels. The larger parcel and one of the smaller parcels maintain frontage on Hill Drive.

The applicant has failed to demonstrate voluntary compliance from all of the owners of the affected properties. The City of Morgan Hill has not received any written objections to the annexation, though the applicant has stated that one or more property owners may object to the annexation and is not voluntarily supportive. As a result, a Protest Proceeding is necessary to allow consideration of any objections held by property owners who may wish to be excluded from this annexation. It should be noted that the exclusion of any of these parcels from the annexation would hinder the normal development of the area, as the necessary circulation could not be installed. Similarly, exclusion of any of the westerly parcels, will result in the creation of islands within the City, a condition prohibited by LAFCO. In accordance with LAFCO policy, when an annexation is proposed not having 100 percent consent by all property owners, the City Council is required to hold a public hearing and adopt a resolution to initiate a Protest Proceeding. At the public hearing, the Council must set a date certain for the Protest Proceeding to be Noticed and held between 21 and 60 days of the public hearing. Staff recommends that the Protest Proceeding be set for the Council meeting of August 18, 2004. No other action is to be taken on this matter at this meeting.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing this application.

Agenda Item # 16

Prepared By:

Contract Planner

Approved By:

CD Director

Submitted By:

City Manager

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL SETTING DATE CERTAIN FOR CONSIDERATION OF REORGANIZATION OF AREA DESIGNATED “HILL-GERA ANNEXATION”, PROPERTY LOCATED WEST OF HILL ROAD, BETWEEN PEAR DRIVE AND THE SOUTHERLY BOUNDARY OF THE EL DORADO III SUBDIVISION, OF APPROXIMATELY 19.50 ACRES AND WITHDRAWAL OF SAID TERRITORY FROM THE SOUTH SANTA CLARA COUNTY FIRE PROTECTION DISTRICT. (APNs 728-08-014 & 015 and 728-07-047, 048, 050 & 051)

WHEREAS, the City Council of the City of Morgan Hill has received a written petition in accordance with the provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, requesting to annex into the City of Morgan Hill certain territory designated “Hill-Gera”, located in the County of Santa Clara, State of California, hereinafter more particularly described; and

WHEREAS, the property, consisting of approximately 19.50 acres on the west side of Hill Road between Pear Drive and the southerly boundary of the El Dorado III subdivision (APNs 728-08-014, 728-08-015, 728-07-047, 728-07-048, 728-07-050, and 728-07-051), is contiguous to the City of Morgan Hill and is within the urban service area; and

WHEREAS, the following special district would be affected by the proposed annexation: the South Santa Clara County Fire Protection District; and

WHEREAS, annexation would provide for use of City services; and

WHEREAS, this territory was rezoned on March 6, 2002, to City of Morgan Hill, Pre-zone designation of RE (40,000)/RPD Residential Estate/Residential Planned Development; and

WHEREAS, the City of Morgan Hill, as Lead Agency for environmental review for the reorganization, a Mitigated Negative Declaration was adopted on March 6, 2002; and

WHEREAS, the proposed annexation is described in greater detail in the attached map and description (Exhibits “A” and “B”); and

WHEREAS, as provided in Government Code Section 56757, the City Council of the City of Morgan Hill shall be conducting authority for a reorganization including an annexation to the City; and

WHEREAS, said territory is uninhabited and all owners of land included in the proposal have not consented to this annexation;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Morgan Hill hereby initiates annexation proceedings and will consider annexation of the territory to the City designated as "Hill Road Annexation No. 2", and detachment from the South Santa Clara County Fire Protection District at a public hearing on August 18, 2004; and,

BE IT FURTHER RESOLVED, that the City Council of the City of Morgan Hill will hold a Protest Proceeding on this matter at the regular Council meeting of August 18, 2004.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 21st Day of July, 2004 by the following vote.

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

🦉 CERTIFICATION 🦉

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on July 21, 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: July 21, 2004

Agenda Item # 17

Prepared By:

Asst. to the City Mgr.

Submitted By:

City Manager

ASSESSMENT OF HAZARDOUS VEGETATION MANAGEMENT PROGRAM CHARGES

RECOMMENDED ACTION:

1. **Open/Close** Public Hearing.
2. **Confirm Section A** of the Final Report on the 2004 Hazardous Vegetation Program
3. **Confirm Section B** of the Final Report on the 2004 Hazardous Vegetation Program
4. **Confirm Section C** of the Final Report on the 2004 Hazardous Vegetation Program
5. **Adopt Resolution** ordering the Final Report on the 2004 Hazardous Vegetation Program be transmitted to the County Assessor's Office and that liens be posted against the properties on the report.

EXECUTIVE SUMMARY:

Since 1995, the City's Hazardous Vegetation Management Program has been administered through the Santa Clara County Fire Marshal's Office. The Program identifies properties in Morgan Hill with hazardous vegetation and/or brush and notifies the property owners. The property owners are given a specific timeline to remove the vegetation, and if they do not, a contractor selected by the County removes the vegetation. The cost for the abatement is then passed on to the owner as an assessment on their property tax bill.

Five hundred eighty six parcels in Morgan Hill were included in the 2004 Hazardous Vegetation Program. According to the Fire Marshal's Office, the County contractor abated 84 parcels of land this year. Those parcels are listed in Exhibit A. Eighty-six percent of properties in the Program were abated by the property owner.

The purpose of the public hearing is to hear comments by property owners about the Hazardous Vegetation Program. Staff from the Fire Marshal's Office will be available to answer any questions.

Following the public hearing, the final stage in the 2004 Hazardous Vegetation Abatement Program is for the Council to order that the abatement expenses be assessed against the owners' property tax bill. This is accomplished by adopting the attached resolution. The resolution authorizes the transmission of the Final Report to the County Assessor's Office, and requests that liens be posted against the properties on the report. This action must be complete before August 10, 2004.

FISCAL IMPACT:

The Hazardous Vegetation Management Program is user fee supported. The per-lot assessment includes costs for doing the vegetation and brush control work plus the overhead cost to administer the Program.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ORDERING THE FINAL REPORT ON THE 2004 HAZARDOUS VEGETATION PROGRAM BE TRANSMITTED TO THE COUNTY ASSESSOR'S OFFICE AND THAT LIENS BE POSTED AGAINST THE PROPERTIES ON THE REPORT.

Whereas the City Council, on the 21st day of July 2004, confirmed the Santa Clara County Fire Marshal's Office Final Report on the 2004 Hazardous Vegetation Program; and

Whereas this report identifies properties in Morgan Hill where hazardous weed and brush abatement was conducted by the County of Santa Clara's contractor in accordance with the 2004 Hazardous Vegetation Program; and

Whereas property owners listed on the Final Report were notified of the public hearing conducted on July 21, 2004; and

Whereas properties requiring abatement by the Fire Marshal's Office contractor are to be assessed the abatement cost via a lien on their property taxes;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Morgan Hill that the Final Report on the 2004 Hazardous Vegetation Program, attached hereto as "Exhibit A," be transmitted to the Santa Clara County Assessors Office and that the Santa Clara County Assessors Office post a lien against the properties on this list in accordance with the appropriate statutes.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 21st day of July 2004, by the following vote.

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

☞ CERTIFICATION ☞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. adopted by the City Council at a Regular Meeting held on July 21, 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A

2004 Hazardous Vegetation Assessment Report

Section A

SITUS #	SITUS STREET NAME	APN	OWNER	ChargesTotal
	DIANA	72602007	TSAI YOUNG H AND SO M ET AL	\$ 639.18
		72624006	JONES JERRY W	\$ 2,242.28
17610	MONTEREY	72624007	JONES JERRY W	\$ 2,242.28
		72811026	GREWAL PRITAM S AND MANJEET K	\$ 877.54

2004 Hazardous Vegetation Assessment Report

Section B

SITUS #	SITUS STREET NAME	APN	OWNER	ChargesTotal
	HILL	72810005	BAMDAD RAFI AND NABAVIZADEH KATAYOUN ET AL	\$ 3,214.12

2004 Hazardous Vegetation Assessment Report

Section C

SITUS #	SITUS STREET NAME	APN	OWNER	ChargesTotal
		72602012	WU TZWU-CHWAN AND MEI-TSU K	\$ 2,453.59
		72602016	JUNG HUNG WEN	\$ 606.65
	DIANA	72604006	MILLER ROBERT J TRUSTEE	\$ 1,094.08
55	4TH	72613042	GLENROCK BUILDERS INC	\$ 747.43
17520	MONTEREY	72614049	RICHTER GAYLE H TRUSTEE & ET AL	\$ 747.43
		72622051	PROSPERITY INVESTMENTS	\$ 2,179.33
	MAIN	72623001	UNION PACIFIC CORP	\$ 4,484.55
	CENTRAL	72624001	UNION PACIFIC CORP	\$ 3,737.13
	MONTEREY	72624019	ZAMORA FRANK I AND DIANA	\$ 1,884.90
		72624023	JONES MARIE A	\$ 563.28
		72625007	UNION PACIFIC CORP	\$ 5,979.40
		72625008	UNION PACIFIC CORP	\$ 7,474.25
		72625009	UNION PACIFIC CORP	\$ 747.43
		72625010	UNION PACIFIC CORP	\$ 5,979.40
	JARVIS	72630007	ABBOTT LABORATORIES	\$ 2,242.28
		72631025	DELUCCHI ASSOCIATES	\$ 2,242.38
		72631038	KALMAN ALAN D AND FREIA G TRUSTEE	\$ 2,827.30
895	COCHRANE	72633024	THARALDSON FAMILY INC	\$ 2,421.06

SITUS #	SITUS STREET NAME	APN	OWNER	ChargesTotal
18650	ADAMS	72634001	BEITPOLOUS YOUAV AND MARIAM ET AL	\$ 585.03
	PEEBLES	72636014	KALEND LITA	\$ 476.65
1165	TAYLOR	72636020	KALEND LITA	\$ 639.18
19220	TAYLOR	72641046	O'BRIEN DENNIS AND GLORIA A TRUSTEE	\$ 563.28
19230	TAYLOR	72641047	O'BRIEN DENNIS AND GLORIA A TRUSTEE	\$ 563.28
19260	TAYLOR	72641057	O'BRIEN DENNIS AND GLORIA A TRUSTEE	\$ 563.28
19250	TAYLOR	72641058	O'BRIEN DENNIS AND GLORIA A TRUSTEE	\$ 563.28
19240	TAYLOR	72641059	O'BRIEN DENNIS AND GLORIA A TRUSTEE	\$ 563.28
19210	TAYLOR	72641060	O'BRIEN DENNIS AND GLORIA A TRUSTEE	\$ 563.28
19255	CLAYTON	72641061	O'BRIEN DENNIS AND GLORIA A TRUSTEE	\$ 563.28
19235	CLAYTON	72641062	O'BRIEN DENNIS AND GLORIA A TRUSTEE	\$ 563.28
19215	CLAYTON	72641063	O'BRIEN DENNIS AND GLORIA A TRUSTEE	\$ 563.28
3490	OAK HILL	72920003	JACKSON OAKS ASSN	\$ 747.43
15950	JACKSON OAKS	72924038	BUSLIK WALTER S TRUSTEE	\$ 476.65
17290	LAKE VIEW	72934010	STAHARA JACQUELINE M AND STEPHEN S	\$ 747.43
	MONTEREY	76409013	UNION PACIFIC CORP	\$ 8,969.10
		76409032	GLENROCK BUILDERS INC	\$ 3,691.73
		76409033	LB/L-DUCIII MASTER LLC	\$ 5,479.09
		76410003	UNION PACIFIC CORP	\$ 4,484.55
18105	MONTEREY	76411003	VIOLA PROPERTIS FAM LP	\$ 747.43
120	CAMPOLI	76424010	E & H THIRD FAM LP	\$ 2,507.74
	(LAND ONLY)	76428007	DAVIDSON CHARLES W AND ANITA	\$ 7,409.30
	HALE	76432017	HUNT JONATHAN O ET AL	\$ 828.68
18200	CHRISTEPH	76432025	MICHAEL K TANSY	\$ 2,615.99
18470	CASTLE HILL	76445007	GLENROCK BUILDERS INC	\$ 1,104.90
	CASTLE HILL	76445031	GLENROCK BUILDERS INC	\$ 276.23
		76704009	Pacific Gas & Electric Company Land Services Division Attn: Len Grilli	\$ 2,547.90
		76705001	Pacific Gas & Electric Company Land Services Division Attn: Len Grilli	\$ 585.03
		76705037	GIANCOLA & SONS INC JOHN A	\$ 2,989.70
	WARREN	76706001	HOSSEINPOUR AKBAR AND MEHRY	\$ 552.50
	NOB HILL	76706024	WARD MICHAEL AND MICHELLE	\$ 552.45
	NOB HILL	76706025	WARD MICHAEL AND MICHELLE	\$ 552.45
	NOB HILL	76706026	WARD MICHAEL AND MICHELLE	\$ 552.45
	NOB HILL	76706027	WARD MICHAEL AND MICHELLE	\$ 552.45

SITUS #	SITUS STREET NAME	APN	OWNER	ChargesTotal
		76709029	VILLA CIOLINO ASSOCS, LTD PARTNERSHIP	\$ 430.58
16835	MONTEREY	76710002	MS. MARIA TURRETTO SHROPSHIRE	\$ 2,242.28
16825	MONTEREY	76710003	DAVIS PAUL H	\$ 3,737.13
15335	MONTEREY	76723016	WU TZWU-CHWAN AND MEI-TSU K ET AL	\$ 2,034.48
	(LAND ONLY)	77904066	CJ UHLENBERG ATTENTION: SHIRLEY	\$ 1,187.60
	RAILROAD	81701058	UNION PACIFIC CORP	\$ 4,484.55
16855	CHURCH	81701061	HEDAYATI BAHRAM	\$ 1,218.63
16810	MONTEREY	81701062	ALCINI PARTNERSHIP INC	\$ 1,494.85
16840	MONTEREY	81701063	ALCINI PARTNERSHIP	\$ 1,494.85
16495	VINEYARD	81702043	MICHAEL T. MANGANO	\$ 4,484.55
16470	VINEYARD	81702044	PTM DEVELOPMENT LLC	\$ 1,126.55
199	MAST	81702064	Bud flocchin sierra meat company	\$ 614.28
		81706015	UNION PACIFIC CORP	\$ 747.43
800	TENNANT	81708030	D DEVI OIL INC	\$ 760.53
16275	CONDIT	81713024	NGUYEN NHIEU	\$ 585.03
	TENNANT	81720034	GRANGER-AKIN SUE G TRUSTEE	\$ 1,170.05
16015	CAPUTO	81729027	APARICIO RAMONA TRUSTEE & ET AL	\$ 552.50
		81731053	MONTAN INC	\$ 552.50
	BARRETT	81733003	ODISHO PENOEIL ET AL	\$ 1,111.55
16480	RAILROAD	81758001	NAPA ASSOCIATES	\$ 1,111.55
		81760062	E & H 3RD FAM LP	\$ 747.43
		81760063	E & H 3RD FAM LP	\$ 747.43
		81760064	E & H 3RD FAM LP	\$ 747.43
		81760065	E & H 3RD FAM LP	\$ 747.43
		81760066	E & H 3RD FAM LP	\$ 747.43
		81760067	E & H 3RD FAM LP	\$ 747.43
2785	TORO VISTA	81770007	Steven Shapero	\$ 530.80



CITY COUNCIL STAFF REPORT

MEETING DATE: July 21, 2004

GPA-04-06: City of Morgan Hill-Text Amendment for Measure C

RECOMMENDED ACTION(S):

Open/close Public Hearing
Adopt Resolution

EXECUTIVE SUMMARY: On March 4, 2004, the voters of Morgan Hill approved Measure C, which amended and extended the City's Residential Development Control System (RDCS). Measure C supplements the previous RDCS initiative Measure P. The General Plan text discusses the RDCS and Measure P. With the passage of Measure C, some of the language in the General Plan that refers to the RDCS is incorrect and needs to be updated to reflect the changes in the amended RDCS.

Attached for the Council's reference, as "Exhibit A" is the struckout language and new language for the General Plan text. The Planning Commission voted 5-0, with two absent, at their July 13 meeting recommending approval of the General Plan text amendment. Attached is a copy of the Planning Commission July 13 staff report and draft minutes.

Measure C requires the City Council to amend the Morgan Hill General Plan as necessary to ensure internal consistency with all provisions of the Measure C initiative within 120 days of the enactment of the initiative. To comply with this deadline, Council is being asked to use its floating date and approve the General Plan amendment at their July 21, 2004 meeting.

FISCAL IMPACT: No budget adjustment required.

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Agenda Item # 18

Prepared By:

Associate Planner

Approved By:

Planning Manager

Submitted By:

City Manager

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF MORGAN HILL APPROVING AN
AMENDMENT TO THE GENERAL PLAN TEXT IN
ORDER TO BRING THE TEXT INTO CONFORMANCE
WITH LANGUAGE IN THE VOTER APPROVED
MEASURE C INITIATIVE.**

WHEREAS, such request was considered by the City Council at their regular meeting of July 21, 2004, at which time the City Council approved GPA-04-06: City of Morgan Hill-Text Amendment for Measure C; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE
AS FOLLOWS:**

SECTION 1. The General Plan text amendment is consistent with the provisions of the General Plan and Measure C.

SECTION 2. The General Plan shall be amended as shown in the attached Exhibit A.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 21st Day of July, 2004 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

☞ CERTIFICATION ☞

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL,
CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on July 21, 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: July 21, 2004

APPROVAL OF THE MITIGATION MONITORING AND REPORTING PLAN FOR THE INSTITUTE GOLF COURSE

RECOMMENDED ACTION(S):

Adopt Resolution

EXECUTIVE SUMMARY:

On July 7, 2004, the City Council adopted a resolution certifying the Environmental Impact Report for the Institute Golf Course and Mathematics Conference Center located at 14800 Foothill Avenue in Morgan Hill. At the same meeting, an ordinance amending the zoning on the property from O-S, Open Space to PUD, Planning Unit Development, was introduced for first reading. Upon adoption of the Zoning Ordinance, environmental mitigation measures identified in the EIR that are not currently part of the project will be incorporated as conditions of the project approval. The second reading of the Ordinance and approval of the project is the next agenda item. Prior to project approval, the City Council must first approve the attached Mitigation Monitoring and Reporting Plan (MMRP). The MMRP describes the processes for implementing identified mitigation measures, the persons responsible for implementing and/or overseeing those mitigations, the method of compliance with the mitigation and the timing for compliance with the mitigation. Cost of implementing the MMRP will be paid for by the project proponent.

Approval of the Mitigation Monitoring and Reporting Plan is recommended by adoption of the attached Resolution.

FISCAL IMPACT:

No budget adjustment required.

Agenda Item # 19

Prepared By:

Planning Manager

**Approved/Submitted
By:**

City Manager

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL APPROVING THE MITIGATION
MONITORING AND REPORTING PLAN FOR THE
INSTITUTE GOLF COURSE AND MATHEMATICS
CONFERENCE CENTER**

WHEREAS, such request was considered by the City Council at their regular meeting of July 21, 2004, at which time the City Council reviewed the Mitigation Monitoring and Reporting Plan (MMRP) for application ZA-03-03: Foothill – The Institute LLC; and

WHEREAS, testimony received at a duly-noticed public meeting along with exhibits and drawings and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE
AS FOLLOWS:**

SECTION 1. An environmental impact report has been prepared for this application and has been found complete, correct and in compliance with the requirements of California Environmental Quality Act. The EIR was certified by the City Council on July 7, 2004 and Notice of Determination will be filed upon project approval.

SECTION 2. Section 15097 of the State CEQA Guidelines requires preparation of a Mitigation Monitoring and Reporting Plan as a means to ensure that the mitigation measures contained in the project EIR are implemented and completed in a timely manner.

SECTION 3 The City Council hereby approves the Mitigation Monitoring and Reporting Plan for the Institute Golf Course and Mathematics Conference Center attached hereto as Exhibit “A.”

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 21st Day of July, 2004 by the following vote.

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

🏛️ CERTIFICATION 🏛️

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____, adopted by the City Council at a Regular Meeting held on July 21, 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

MITIGATION MONITORING AND REPORTING PLAN INSTITUTE GOLF COURSE PUD REZONING

This Mitigation Monitoring and Reporting Plan is prepared pursuant to Section 15097 of the CEQA Guidelines. It describes the processes for implementing identified mitigation measures and the persons responsible for implementing and/or overseeing those mitigations. The specific mitigation measures themselves are intended to be the mitigation measures identified in the Final EIR approved by the City Council of the City of Morgan Hill. Any inconsistencies in the scope, scale or design of the mitigation measures themselves should be resolved by adherence to the text of the Final EIR.

It is assumed that a single Mitigation Planting and Grading Plan (MPGP) will be prepared for this site that demonstrates compliance with all physical site modifications required as conditions of project approval. Preparation of that MPGP may be phased at the discretion of the City's Community Development Director. Accompanying documents for the MGPG will include detailed descriptions of ongoing activities, including site maintenance and facility operations. That documentation is referred to as the Mitigation Operations Plan.

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY[‡]	TIMING
1	Degradation of runoff and surface water quality Impacts to habitat of downstream species	Install containment dikes around maintenance areas, and construct roofing over any area where the potential for oil, grease and fuel spillage is high. Install oil/grease separators in all catch basins in the parking area drainage system.	Show containment dikes, roof or roofs, and location of all oil/grease separators on Mitigation Planting and Grading Plan. Pay fees for City review, approval, and field verification. Verify design and installation of dikes, roof or roofs, and all oil/grease separators.	Project Proponent CDD	Submit to City by September 21, 2004 Upon application.
2	Degradation of riparian habitat	Post signs near possible or likely access points into the riparian corridor instructing golfers that entry is forbidden. Publish and distribute rules of play that prohibit entering the riparian corridor.	Show sign locations on Mitigation Planting and Grading Plan. Provide copy of rules of play. Pay fees for City review, approval, and field verification. Verify that sign installations are at all likely access points into riparian corridor. Review rules of play for clarity and adequacy.	Project Proponent CDD	Submit to City by September 21, 2004 Upon application

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY[‡]	TIMING
3	Loss of Burrowing Owl habitat	Comply with City of Morgan Hill Burrowing Owl Mitigation Plan	Pay fees required by MHBOMP Collect fees	Project Proponent CDD	Prior to issuance of Site Development and Grading Permit Upon application
4	Erosion and siltation from failure of existing earthwork	A geotechnical report will be prepared by a registered civil engineer or certified engineering geologist that verifies the stability of all existing grading/earthwork, except for areas previously documented (<i>i.e.</i> , berm along Foothill Avenue and berm along the southern edge of Pond G). If the existing earthwork is not found to be structurally sound and capable of resisting erosion and/or collapse, the grades will be reworked in conformance with an engineered plan.	Submit report prepared by registered civil engineer or certified engineering geologist. Pay fees for City review, approval, and field verification. Obtain grading permit to revise on-site earthwork, if required by report. Approve grading permit as appropriate. Verify that earthwork conforms to engineered report. Complete grading revisions as required by report.	Project Proponent DPW Project Proponent	Submit to City by September 21, 2004 Upon application Complete grading by July 15, 2005
5	Future grading and construction may impact wetlands.	Obtain from the U.S. Army Corps of Engineers, a determination that no jurisdictional wetlands will be impacted by the proposed grading or construction.	Submit USACE determination that no impacts to wetlands would result from proposed grading and/or construction prior to obtaining any grading or building permit. Verify that no wetlands will be impacted	Project Proponent DPW/Building Official	Prior to receiving Site Development and Grading Permit Prior to issuance grading or building permit

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY[‡]	TIMING
6	Discharge of water from the lakes to the creek or other drainage would impact water quality	<p>Obtain an NPDES "General Permit for Discharges with Low Threat to Water Quality" from the Central Coast RWQCB for all of the on-site lakes, except where they are designed and operated to assure no discharge. The permit application will include identification of any chemicals added to the lakes for water quality control or other reasons, as provided by Application Requirement 1b (1) in the General Permit. The project proponent shall also comply with all provisions of the General Permit, including monitoring and reporting provisions established by the RWQCB.</p> <p>If any lakes are used as complete retention lakes, develop an operations plan, including supporting calculations and operating criteria, to verify that the lakes have capacity for and will be operated to contain the 100-year, 60-day runoff from the contributing drainage area.</p>	<p>Apply for, obtain, and implement and NPDES "General Permit for Discharges with Low Threat to Water Quality" from the Central Coast RWQCB for all of the on-site lakes, except where they are designed and operated to assure no discharge. Submit capacity verification for all lakes to the RWQCB for review and approval. Provide copy of General Permit to City Community Development Director.</p> <p>Review calculations and issue permit where requirements are met.</p> <p>Verify that NPDES general permit has been obtained.</p> <p>In the event that one or more lakes is to be used for complete retention, have an operations plan prepared by a licensed civil engineer. Submit to City of Morgan Hill with fees for review, approval and field verification.</p> <p>Verify that lake capacity and operations plan will avoid spillover impacts to nearby properties. If spillover does not occur, require modifications.</p>	<p>Project Proponent</p> <p>RWQCB</p> <p>CDD</p> <p>Project Proponent</p> <p>DPW</p>	<p>Permit application must be submitted by August 1, 2004, or date that will permit the RWQCB to issue the permit for discharge to occur no later than October 31st.</p> <p>Before October 31st</p> <p>Before October 31st</p> <p>Submit to City by September 21, 2004</p> <p>Upon submittal</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY[‡]	TIMING
7	Golf course construction resulted in removal of ordinance size trees	<p>City Staff will review aerial photographs and other historic documents to estimate the number and size of trees lost.</p> <p>Appropriate on-site locations for new trees will be identified by a qualified botanist or arborist. Mitigation for the removal of non-native, ordinance species could be incorporated into the landscaping plan for the proposed development or they could also be mitigated by planting native trees in the riparian setback area; and</p> <p>Lost native trees greater than six inches in diameter will be replaced at a 5:1 ratio. Planting stock will be collected locally.</p> <p>Planting will be conducted from November to January using small nursery stock. The replacement trees will be planted in an environment suitable for their establishment and growth. These trees will be irrigated and maintained for a period of not less than three years. The mitigation site will be protected from future disturbance and the restoration effort will be monitored for five years, reports of which will be provided to the City.</p>	<p>Retain a certified arborist or licensed landscape architect to recommend on-site locations for new tree plantings and planting locations will be shown on Mitigation Planting and Grading Plan.</p> <p>Pay fees for staff review, approval and field verification.</p> <p>City staff may select certified arborist or licensed landscape architect to evaluate historic documents and to recommend new planting locations.</p> <p>Staff must review and approve tree planting plan before implementation. Trees planted prior to City approval may or may not be considered part of mitigation program.</p> <p>Provide annual update prepared by certified arborist or licensed landscape architect on status of tree growth and health to City. Pay fees for review and field verification. Trees that die during the first five years after planting must be replaced in kind, and their replacement must be reflected in the annual status report.</p> <p>Monitor status and condition of trees.</p>	<p>Project Proponent</p> <p>CDD</p> <p>Project Proponent</p> <p>CDD</p>	<p>Submit estimate prepared by arborist or landscape architect with application for Site Development and Grading Permit</p> <p>Prior to issuance of Site Development and Grading Permit</p> <p>With issuance of Site Development and Grading Permit, and ongoing.</p> <p>Ongoing</p>

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	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY[‡]	TIMING
9	Irrigation of the site may substantially deplete groundwater resources	<p>Implementation of one of the following measures will reduce water supply impacts to a less than significant level:</p> <p>(1) Reduce the amount of irrigated turf within the golf course to a maximum of approximately 85 to 100 acres of total turf and associated landscaping area, or otherwise reduce the irrigation water demand of the existing golf course by approximately 50 percent. Reduction of the amount of turf will also reduce the fertilizer requirements and the associated groundwater-nitrate impact of the project; or</p> <p>(2) A detailed groundwater investigation can be conducted to refine the mitigation (i.e., reduce on-site water use by approximately 50 percent) as described above. The scope of this investigation will need to include an inventory of existing water wells, pumping rates, water level fluctuations and gradients, aquifer characteristics (e.g., transmissivity and storativity), and recharge rates. From this information, a groundwater budget and hydraulic model shall be developed to estimate the change in groundwater conditions caused by the pumping of groundwater for golf course irrigation. The scope and the results of this investigation shall be subject to review and approval by the Santa Clara Valley Water District. Once the groundwater investigation is complete and approved by the Santa Clara Valley Water District and the City of Morgan Hill, the water usage on the project site can be adjusted based on the results of the investigation (i.e., either increased or decreased). The groundwater investigation</p>	<p>Inform the Director of Community Development of the proposed mitigation method within 30 days of PUD zoning approval.</p> <p>Depending on which form of mitigation is selected, take the indicated action:</p> <p>(1) Show the areas of irrigated turf and/or other landscaping areas to be removed on the Mitigation Planting and Grading Plan. Include a schedule for removal of the turf and landscaping. Provide Plan to City with fees for review, approval, and field verification.</p> <p>(2) Provide a scope for the groundwater investigation prepared by a licensed civil engineer with appropriate expertise in groundwater hydrology to City and to SCVWD. Obtain approval of scope and conduct investigation. After completion of study and acceptance of its results by the City and the SCVWD, adjust water use on site to reflect findings of the study. Study must be complete within six months of approval of the PUD zoning, or water use on site must be reduced by 50 percent.</p> <p>(3) Prepare plan to obtain and use recycled water on the site. Include agreement with recycled water supplier, engineered drawings of water supply lines, and on-site plumbing design to ensure separation of recycled water and potable water, consistent with state law and local health regulations. Another method for reducing water use must be implemented during the time required to</p>	<p>Project Proponent</p> <p>Project Proponent</p>	<p>By August 23, 2004</p> <p>Complete study or implement alternative mitigation by January 21, 2005</p>

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	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY[‡]	TIMING
		<p>must be completed and approved by the Santa Clara Water District and the City of Morgan Hill within 6 months to avoid interim impacts to the groundwater basin and neighboring properties from the continued excessive use of water on the project site. If the investigation is not completed and approved within 6 months, then water use on the project site must be reduced by approximately 50 percent, as described above; or</p> <p>(3) Subject to further research, the use of recycled water to irrigate the golf course could be implemented.</p>	<p>design, construct, and implement a recycled water alternative. If a recycled water option becomes feasible in the future, it may be substituted for other methods implemented to reduce water use.</p> <p>Monitor the implementation process for the selected mitigation method. Confirm with appropriate oversight agencies (SCVWD, County Health Department, recycled water supplier, City Water Utility, etc.) that implementation is occurring in a timely fashion. If timely implementation appears unlikely, inform project proponent that water use on site must be reduced by 50 percent at the end of six months after approval of the PUD zoning. Obtain well logs from SCVWD to confirm water use.</p> <p>Review scope of mitigation program and approve when acceptable. Review groundwater investigation report, if provided, and consult with City on results. Provide well logs to City for monitoring purposes.</p> <p>The City and/or the Water District may conduct additional monitoring and take corrective action, if necessary, to ensure that no groundwater depletion is occurring.</p>	<p>CDD</p> <p>SCVWD</p> <p>CDD/SCVWD</p>	<p>Prior to approval of Site Development and Grading Permit</p> <p>City will consult within 30 days of receiving report</p> <p>Ongoing</p>

	A	B	C	D	E
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10	Golf course construction resulted in higher localized peak runoff in the vicinity of main entrance on Foothill Avenue.	Re-design the drainage system for the golf course to reduce the peak runoff flows to levels that are equal to or less than pre-development conditions and prevent uncontrolled runoff onto Foothill Avenue within the frontage area of the project site. This shall require redesign of the on-site drainage system to provide stormwater detention capability for the runoff from the Maintenance drainage area in order to assure that the peak runoff flow from this area of the site does not cause concentrated uncontrolled runoff onto Foothill Avenue. Prepare a revised hydrologic analysis verifying adequate capacity for the relevant sections of the storm drain system, and an updated detention analysis for Lakes A through E.	<p>Provide Grading Plan, showing the redesign of the drainage system as indicated, to the City of Morgan Hill and the SCVWD. The redesign of the on-site drainage system for the project site, including the revised drainage and detention basin analysis, must be reviewed and approved by the Santa Clara Valley Water District and the City of Morgan Hill. Pay fees for review, approval and field verification</p> <p>Review the drainage plans and consult with the SCVWD. Approve grading permit when appropriate.</p> <p>Revise on-site grades as required by the approved grading permit.</p> <p>Verify that revised grading is consistent with approved plan.</p>	<p>Project Proponent</p> <p>CDD/DPW</p> <p>Project Proponent</p> <p>DPW</p>	<p>Submit to CDD by August 23, 2004</p> <p>Require modifications and implementation prior to October 15, 2004</p> <p>Complete prior to October 15, 2004</p> <p>Upon completion</p>
11	Construction and continued use of the golf course has eliminated red-legged frog , California tiger salamander, and Western pond turtle habitat.	Shallow water shelves will be constructed and vegetated with native emergent vegetation around the perimeter of ponds A, B, C, D, E, F and G. Native emergent vegetation shall be established on at least 50 percent of the perimeter of each pond and shall be approximately 5 to 10 feet in width.	<p>Provide Mitigation Planting and Grading Plan that shows vegetated shelves in all seven ponds indicated. Submit plan to City of Morgan Hill with necessary fees for review, approval and field verification. Include proposal for pre-construction inspection and construction monitoring by qualified herpetologist to ensure that no impacts to red-legged frogs occurs.</p> <p>Review plans for conformance with identified mitigation measures. Consult</p>	<p>Project Proponent</p> <p>CDD</p>	<p>Submit to City by September 21, 2004</p> <p>With approval of Site Development</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY[‡]	TIMING
			<p>with biologists if necessary. Approve plans and verify that construction is consistent with approved plans. Ensure that on-site monitors are present during construction.</p> <p>Install vegetated shelves as shown on plans.</p>	Project Proponent	<p>and Grading Permit</p> <p>By July 15, 2005</p>
12	Construction and continued use of the golf course has eliminated red-legged frog , California tiger salamander, and Western pond turtle habitat.	Catch basins and other storm drain outlets shall not empty directly into any drainages leading to on-site ponds, but rather, must flow through vegetated buffers, filter strips or swales or other treatment measures deemed by the City to provide equivalent filtration, prior to entering ponds or other waterways. Catch basins and storm drain inlets must be designed with a grid cover with a grid sized to ensure that neither red-legged frogs nor tiger salamanders can fall into the drains.	<p>Prepare Mitigation Planting and Grading Plan that shows location and design of selected treatment measures for all storm drain outlets. Submit plan to City of Morgan Hill with necessary fees for review, approval and field verification.</p> <p>Review plans for conformance with identified mitigation measures. Consult with water quality experts, if necessary. Approve plans and verify that construction is consistent with approved plans.</p> <p>Install treatment systems as shown on plans.</p> <p>Verify maintenance of treatment systems annually.</p>	<p>Project Proponent</p> <p>CDD</p> <p>Project Proponent</p> <p>CDD</p>	<p>Submit application for Site Development and Grading Permit by September 21, 2004</p> <p>With approval of Site Development and Grading Permit</p> <p>By July 15, 2005</p> <p>Ongoing</p>
13	Ongoing use and maintenance of the golf course will adversely impact the quality of the riparian habitat, especially the high quality riparian	A 25-foot setback from the edge of the existing lower-quality riparian habitat and a 100-foot setback from the edge of the existing higher quality riparian habitat will be established on the project site. The setback area will be established as a riparian buffer planting zone with native trees and shrubs, such as native oaks and willows.	Submit as part of the Mitigation Planting and Grading Plan, a revegetation plan prepared by a qualified restoration ecologist that identifies the precise location of the riparian corridor relative to all on-site improvements, and illustrates all areas of encroachment into the riparian setback, with necessary fees	Project Proponent	Submit application for Site Development and Grading Permit by September 21, 2004

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY[‡]	TIMING
	habitat along the upper reaches of Corralitos Creek.	<p>If encroachment within the identified setbacks is allowed by the City, mitigation for the area of each encroachment into the required setback (described below) will be required to offset the impacts to habitat quality that would result from the encroachment.</p> <p>Mitigation for Reduction of Riparian Habitat Setbacks: An area of riparian habitat that is equivalent in size to the area of the encroachment(s) proposed into the setbacks, could be provided at a 1:1 ratio elsewhere along the same drainage on this site. Uses or activities within the encroachment areas within the 100-foot riparian setback will be limited to roughs and fairways to within 25 feet of the edge of the riparian habitat; unmaintained rough could be as close as 15 feet to the edge of the riparian habitat. The tees and greens that are retained in the encroachment area will be mitigated by the re-establishment and protection of riparian habitat at a 2:1 ratio (replacement:impacted) that is within three miles of the encroachment and within the Llagas Creek watershed.</p>	<p>for review, approval and field verification. Supplemental documents submitted must include: (1) an accurate map prepared by a civil engineer with the assistance of a qualified biologist showing the location of the riparian corridor on the site and the setbacks from low and high quality riparian habitat; (2) a landscape plan prepared by a restoration biologist documenting the size and species of all plantings within the setback area, consistent with the criteria identified in the FEIR.</p> <p>Verify accuracy of the site plan and, in consultation with a qualified botanist or restoration biologist, approve or modify the submitted plan.</p> <p>If encroachment into the setback area is allowed by the City, an encroachment mitigation plan will be prepared by a restoration ecologist and will show the exact location of the encroachment and the exact location and type of the replacement habitat to be installed, including any proposed mitigation at off-site locations. The encroachment mitigation plan will be submitted to the City with fees for review, approval, and field verification.</p> <p>Verify accuracy of the site plan and, in consultation with a qualified botanist or restoration biologist, approve or modify the submitted plan.</p>	<p>CDD</p> <p>Project Proponent</p> <p>CDD</p>	<p>With issuance of Site Development and Grading Permit</p> <p>Submit application for Site Development and Grading Permit by September 21, 2004</p> <p>With issuance of Site Development and Grading Permit</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY[‡]	TIMING
			<p>Install mitigation habitat at designated locations, consistent with approved plans. Maintain for at least five years. Provide City with annual monitoring report reflecting oversight by a restoration ecologist, verifying that plant materials that have died were replaced with equivalent materials. Annual reports will be accompanied by fees for review, approval, and field verification</p> <p>Review monitoring reports and verify status of mitigation habitat.</p>	<p>Project Proponent</p> <p>CDD</p>	<p>Install prior to July 15, 2005</p> <p>Ongoing</p>
14	Golf course development removed approximately one-half acre of riparian habitat.	The riparian habitat that was lost due to grading or other development activities within areas of canopy contiguous with riparian habitat will be replaced at a ratio of 3:1. Pre-grading conditions on the site would be determined by City staff through the use of historic aerial photos and other historical documentation of the project site.	<p>Determine pre-grading conditions in consultation with expert consultants as required. Inform Project Proponent of determination.</p> <p>Submit to the City a Mitigation Planting and Grading Plan that includes implementation of riparian habitat replacement, and provision for maintaining the replacement habitat for at least five years. The riparian habitat replacement plan will be prepared by a certified restoration ecologist. The plan will be submitted with necessary fees for review, approval, and field verification.</p> <p>Review plans for consistency with mitigation requirements. Consult with USFWS and consulting biologists if necessary. Approve plans and verify that construction is consistent with approved plans.</p>	<p>CDD</p> <p>Project Proponent</p> <p>CDD</p>	<p>By August 23, 2004</p> <p>Submit application for Site Development and Grading Permit by September 21, 2004</p> <p>Ongoing</p>

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	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY[‡]	TIMING
			<p>Install riparian mitigation habitat as shown on approved plan. Maintain for at least five years. Provide City with annual monitoring report reflecting oversight by a restoration ecologist, verifying that plant materials that have died were replaced with equivalent materials. Annual reports will be accompanied by fees for review, approval, and field verification</p> <p>Review monitoring reports and verify status of mitigation habitat.</p>	<p>Project Proponent</p> <p>CDD</p>	<p>Install by July 15, 2005; maintain for five years.</p> <p>Ongoing</p>
15	25.5 acres of serpentine habitat that would have supported a number of special status plant species was eliminated by golf course construction.	<p>Protect at least 51 acres of suitable serpentine habitat by establishment of a conservation easement in perpetuity. The easement may be purchased as part of a larger mitigation bank.</p> <p>As stated in the July 15, 2003 letter from the USFWS, 35 acres of serpentine habitat located in Kirby Canyon is of exceptional quality. If after on-site verification the City of Morgan Hill agrees that due to its exceptional quality the replacement habitat is equivalent to the mitigation requirement of 51 acres of serpentine habitat, then the purchase and protection of the 35 acres in perpetuity will satisfy this mitigation measure.</p>	<p>Provide signed certification by the USFWS that the amount of habitat indicated has been purchased and suitably protected. Submit necessary fees for City review, approval, and field verification.</p> <p>Verify habitat protection and adequacy. Consult with biologist to verify that the habitat satisfies the mitigation requirement.</p>	<p>Project Proponent</p> <p>CDD</p>	<p>By August 23, 2004</p> <p>Prior to approval of Site Development and Grading Plan</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY[‡]	TIMING
16	25.6 acres of red-legged frog habitat was eliminated by golf course construction.	Protect at least 51.2 acres of suitable red-legged frog habitat by establishment of a conservation easement in perpetuity. The easement may be purchased as a part of a larger mitigation bank.	<p>Provide signed certification by the USFWS that the amount of habitat indicated has been purchased and suitably protected. Submit necessary fees for City review, approval, and field verification.</p> <p>Verify habitat protection and adequacy. Consult with biologist to verify that the habitat satisfies the mitigation requirement.</p>	<p>Project Proponent</p> <p>CDD</p>	<p>By August 23, 2004</p> <p>Prior to approval of Site Development and Grading Plan</p>
17	25.6 acres of red-legged frog habitat, and California Tiger Salamander habitat, was eliminated by golf course construction and ongoing operations.	A non-native predator management plan that operates for the life of the golf course operation will be implemented. The main components of this plan are: 1) a qualified herpetologist previously approved by USFWS will monitor (conduct nocturnal eyeshine surveys) all ponds for bullfrogs and other non-native predators four times per year, and 2) also under the supervision of the herpetologist, draw down any ponds that contain bullfrogs for two to three weeks between October 15 and November 15. The timing of draw down will be phased and done under the supervision of a herpetologist to ensure that red-legged frogs will continue to have available suitable wet areas. This draining of the ponds disrupts the two-year development cycle of the bullfrog and will substantially reduce or eliminate successful reproduction by bullfrogs in this area.	<p>A complete red-legged frog on-site habitat maintenance program will be prepared and implemented by a herpetologist with red-legged frog experience. This program will include appropriate details of the non-native predator management plan. Results of each quarterly survey must be submitted to the USFWS and the City within 30 days of completion. By September 30 of each year, the supervising herpetologist will provide a report to the City on the status of the habitat maintenance program, including identification of any bullfrogs found and the proposed timing for draining the ponds. Submit necessary fees for City review, approval, and field verification.</p> <p>Verify completeness of plan. Consult with USFWS. Review annual reports and verify that ponds are drained. Consult with RWQCB to confirm that NPDES "General Permit for Discharges with Low Threat to Water Quality" was</p>	<p>Project Proponent</p> <p>CDD</p>	<p>Submit by September 21, 2004 and quarterly reports thereafter. Annual reports to be submitted by September 30 of each succeeding year.</p> <p>With issuance of Site Development and Grading Plan and annually thereafter.</p>

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			obtained to permit ponds to be drained. Consult with City on NPDES Permit	RWQCB	By September 30, 2004
18	25.6 acres of red-legged frog habitat was eliminated by golf course construction.	Formally consult with the USFWS to obtain a biological opinion that the continued operation of the golf course will not jeopardize the continued existence of the species and then be issued an incidental take permit. This formal consultation can take the form of a Section 7 (via a Federal action) or a Section 10 (Habitat Conservation Plan). Discussions with the USFWS will determine the appropriate vehicle to process this request.	Submit request for formal consultation to USFWS. Inform City of status of consultation and results of the consultation process. Confirm that formal consultation has occurred and that a permit has been issued.	Project Proponent CDD	By August 23, 2004 Prior to issuance of Site Development and Grading Permit
19	Approximately three acres of breeding ponds for California tiger salamander were eliminated by golf course construction.	Mitigation could consist of improvements to on-site conditions in order to provide three acres of breeding habitat the meets the criteria identified in the Final EIR. In order to meet criteria for breeding ponds, sufficient upland aestivation habitat must be provided adjacent to the breeding ponds. Alternatively, a conservation easement for tiger salamanders could be established at a "to-be-determined" location. The final configuration of the easement (at least three acres of ponds) and associated upland aestivation habitat will depend on the final mitigation design, which will be developed in conjunction with the CDFG. This easement will be in perpetuity. A conservation easement may be purchased as a part of a larger mitigation bank. Otherwise, the owner(s) may work with a	Either provide a detailed plan for modifying on-site ponds to meet the criteria for tiger salamander habitat identified in the Final EIR as part of the Mitigation Planting and Grading Plan, or provide signed verification from the CDFG that a conservation easement has been established for California Tiger Salamander. Submit necessary fees for City review, approval, and field verification. In consultation with a qualified herpetologist, verify the adequacy of the mitigation program proposed, including the adequacy of any off-site habitat, consistent with the standards identified in the Final EIR.	Project Proponent CDD	Submit plan or provide verification with application for Site Development and Grading Permit by September 21, 2004 Prior to approval of Site Development and Grading Permit

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY[‡]	TIMING
		land trust, preferably in the Mt. Hamilton Range Mountains to the east, or the owner(s) could develop their own off-site mitigation easement. Any and all easements must have a legal commitment, be guaranteed management for the purposes of maintaining a California tiger salamander population, and be approved by the CDFG.			
20	Past construction and ongoing operation of the golf course has caused and will continue to cause water quality impacts to water in Corralitos Creek and downstream. This impacts habitat and other beneficial uses within the watershed.	<p>A minimum setback of either (1) 50 feet from the centerline of Corralitos Creek and all tributaries, or (2) 30 feet as measured along the ground surface to the highest anticipated water line of the creek and tributaries as jointly determined by the RWQCB and the City, is necessary to avoid significant impacts to the creek from pollutants in surface runoff.</p> <p>To reduce the water quality setback to a distance that is less than 50 feet from the centerline of the creek channels or 30 feet from the highest anticipated high water line without resulting in an impact, either the areas adjacent to the creek will be graded to flow away from the creek, or the runoff will drain to a collection system and will be filtered prior to entering the creek or ponds. Under no circumstances can the setback from the creek channels be reduced to a distance less than 30 feet from the centerline of the creek except for the fairway of the 6th hole, as described below.</p> <p>The setback from Corralitos Creek within the fairway of the 6th hole may be reduced to 20 feet on the south side of the creek and will adhere to the measures described above for reduced setbacks. The setback from the</p>	<p>Submit a Mitigation Planting and Grading Plan showing the exact location of the minimum setback and the types of vegetation within the setback. The plan will be submitted to the City of Morgan Hill with appropriate fees for review, approval and field verification.</p> <p>Verify location, design and implementation of water quality setbacks.</p> <p>If encroachment into the setback area is proposed, the Mitigation Planting and Grading Plan submitted must show the exact location and type of encroachment within the setback, and will include a design that precludes surface runoff from draining directly into the creek. This may be achieved by one or more of the following: (a) a detailed topographic survey completed by a registered civil engineer or licensed land surveyor that confirms that the existing ground surfaces within the encroachment area drain away from the creek banks; (b) a</p>	<p>Project Proponent</p> <p>CDD</p> <p>Project Proponent</p>	<p>Submit with Site Development and Grading Permit by September 21, 2004</p> <p>With approval of Site Development and Grading Permit, and after construction</p> <p>Submit with Site Development and Grading Permit by September 21, 2004</p>

	A	B	C	D	E
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		north side of the creek on the 6th hole will be at least 70 feet to compensate for the reduced setback along the south side of the creek.	grading plan that demonstrates either that all of the on-site ground surfaces within the encroachment area will be re-graded to achieve the same performance standard as (a), or some combination of the two scenarios (a and b); or (c) runoff from the setback area will drain to a collection system and will be filtered prior to entering the creek or ponds. The plan will be submitted to the City with appropriate fees for review, approval, and field verification. Verify presence, design, and implementation of water quality setbacks from Corralitos Creek and all of its tributaries.	CDD	With approval of Site Development and Grading Permit
21	Degradation of runoff and surface water quality Impacts to habitat of downstream species	Monitor the grounds to control litter and other debris that could be washed into the on-site ponds or drainages (<i>i.e.</i> , weekly pavement sweeping, immediate oil spill clean-up, etc.).	Include all program measures in the SWPPP prepared for the project site. Include all appropriate measures from the Santa Clara County Non-Point Source Program Best Management Practices. Review and approve SWPPP. Verify that SWPPP has been approved by RWQCB.	Project Proponent RWQCB CDD	Prior to any further grading or construction occurring. Upon receiving complete application Prior to issuance of Site Development and Grading Permit

	A	B	C	D	E
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23	Nighttime use of mechanized equipment, including lawn mowers, is more likely to result in destruction of red-legged frogs.	All mechanized equipment used to maintain the grounds shall only be used during the daylight hours.	Include in the Mitigation Operations Plan submitted with the Mitigation Planting and Grading Plan an on-site maintenance schedule that defines the types of maintenance activities that will occur on the site and when they will occur. The plan will be submitted to the City with appropriate fees for review, approval, and field verification.	Project Proponent	Submit with application for Site Development and Grading Permit, by September 21, 2004. Implement the ban immediately.
			Review Mitigation Operations Plan submitted with the Mitigation Planting and Grading Plan, and verify that all mechanical equipment that could harm or kill red-legged frogs will never operate at night. Consult with USFWS. Verify operations are consistent with approved plans for at least five years after approval.	CDD	With approval of Site Development and Grading Permit
			Maintain site consistent with plan approved by City.	Project Proponent	After issuance of first permit.
24	Construction and continued use of the golf course has eliminated habitat for red-legged frog, California Tiger Salamander, and western pond turtle.	All ponds or lakes on site will have a buffer around the perimeter of at least 10 feet in width. This buffer will not be mowed or maintained with mechanized equipment, nor will any chemicals or fertilizers be applied to the surface, and it will be designed to absorb and retard surface flow and to act as a filter for the surface flow. The design and implementation of the buffers shall be subject to the approval of the City to ensure that they satisfy these criteria. Fertilizer may be applied if necessary through a below ground drip irrigation system.	Submit a Mitigation Planting and Grading Plan which shows a 10-foot buffer around all of the on-site ponds/lakes. Identify exact design of the buffers, including species of plantings and/or type of mulch used. Include design detail for below-ground drip irrigation system, if proposed. Include maintenance limitations in the Mitigation Operations Plan submitted with the Mitigation Planting and Grading Plan. The plans will be submitted to the City with appropriate fees for review, approval, and field	Project Proponent	Submit with application for Site Development and Grading Permit, by September 21, 2004

	A	B	C	D	E
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			<p>verification.</p> <p>Review plans and verify that the performance standards identified for the buffer area in the FEIR are met by the proposed planting and operating plans.</p> <p>Install buffers that are consistent with those approved by the City.</p>	<p>CDD</p> <p>Project Proponent</p>	<p>With approval of Site Development and Grading Permit</p> <p>After issuance of first permit.</p>
25	Construction and continued use of the golf course has eliminated habitat for red-legged frog, California Tiger Salamander, and western pond turtle.	Monitoring of the on-site populations of red-legged frogs, California Tiger Salamander, and western pond turtle will be done regularly for at least five years after implementation of the measures listed in this Mitigation, Monitoring and Reporting Plan. The results of the monitoring will be submitted to the City, USFWS and CDFG.	<p>Retain a qualified herpetologist to prepare and implement a monitoring program for all three species. The qualifications of the herpetologist must be approved by the City of Morgan Hill Community Development Director. Submit the initial monitoring program with the Mitigation Operations Plan. Provide annual updates consistent with the program. The plan and annual reports will be submitted to the City with appropriate fees for review, approval, and field verification.</p> <p>Review monitoring plan and annual reports to ensure that all measures identified in the FEIR are being implemented and that adequate protection is provided to the three species. Consult with USFWS and CDFG as appropriate.</p> <p>Implement monitoring plan as approved.</p>	<p>Project Proponent</p> <p>CDD</p> <p>Project Proponent</p>	<p>Submit with application for Site Development and Grading Permit, by September 21, 2004</p> <p>With approval of Site Development and Grading Permit.</p> <p>Immediately.</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY [‡]	TIMING
26	Construction and continued use of the golf course has eliminated habitat for red-legged frog, California Tiger Salamander, and western pond turtle.	Water quality of the on-site ponds and Corralitos Creek will be sampled monthly by qualified personnel and analyzed by a certified water quality laboratory for the duration of the golf course operation to ensure that golf course run-off is not impacting breeding habitat for the California red-legged frog, California Tiger Salamander, and western pond turtle.	<p>As part of the Mitigation Operations Plan, submit a Pond and Creek Water Quality Sampling Program prepared by a qualified water quality engineer or laboratory. The plan will identify who will be responsible for taking the water quality samples, criteria for determining the sampling locations, the chain of custody for the samples, the water quality thresholds that will be used to evaluate the samples, and what actions will be taken (and when) if the thresholds are reached or exceeded. Documentation of sampling program will include exact date and time of sample and weather conditions (<i>e.g.</i>, raining).</p> <p>Annual reports of the water quality sampling program will be submitted to the City with payment of appropriate fees for review, approval, and field verification.</p> <p>Review Sampling Program and verify that it is consistent with the intent and standard of the mitigation identified in the FEIR. Review annual water quality reports and consult with appropriate experts if necessary.</p>	<p>Project Proponent</p> <p>CDD</p>	<p>Submit with application for Site Development and Grading Permit, by September 21, 2004</p> <p>With approval of Site Development and Grading Permit.</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY[‡]	TIMING
27	Ongoing use and maintenance of the golf course may contaminate groundwater below the site, on-site drainages, and the downstream reaches of Corralitos Creek, San Martin Creek and Llagas Creek with pesticides and herbicides and fertilizers.	<p>Preparation and implementation of a Chemical Application Management Plan (CHAMP). This plan shall detail the procedures to construct or reconstruct, operate, and maintain the golf course and shall provide public disclosure regarding pesticides, fertilizers and other chemicals used on the golf course, as well as methods of application and handling.</p> <p>The following provisions shall be considered for inclusion in the CHAMP and reasons satisfactory to the City's Community Development Director must be identified for a failure to include any measures:</p> <ul style="list-style-type: none"> ▪ Drought, pest, and disease resistant grass species shall be selected; ▪ Pesticides shall be handled, applied, and disposed of by a licensed (State-certified) spray technician; ▪ Only approved and legal chemicals shall be used. ▪ All county, state, and federal guidelines must be strictly adhered to regarding storage, handling, and application of pesticides; ▪ Advanced technology/monitoring equipment shall be used to insure minimal application of pesticides, herbicides, and the ability to achieve treatment goals and criteria to minimize off-site movement. ▪ Selection of less toxic, less mobile, and less persistent pesticides shall be a priority management criterion. ▪ Pesticide applications shall be carefully timed and combined with other pest management practices; ▪ Pests shall be accurately identified and pesticide applications made only when 	<p>Prepare and submit CHAMP to City of Morgan Hill Community Development Director, SCVWD, and RWQCB. Submit appropriate fees for review, approval and field verification by all three agencies.</p> <p>Review CHAMP and consult with USFWS, SCVWD and RWQCB. The CHAMP shall be subject to review and approval or concurrence by the City of Morgan Hill, the SCVWD, and the Central Coast RWQCB. If the RWQCB accepts regulatory authority for the CHAMP, reports to the City and SCVWD may be informational only. The City will review annual reports and conduct site visits as necessary to confirm that the project is in conformance with the CHAMP.</p> <p>Implement approved CHAMP. Submit annual reports on implementation and results of water quality monitoring to City, SCVWD and RWQCB.</p>	<p>Project Proponent</p> <p>CDD</p> <p>Project Proponent</p>	<p>Submit with application for Site Development and Grading Permit by September 21, 2004</p> <p>With approval of Site Development and Grading Permit.</p> <p>After issuance of first permit.</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY[‡]	TIMING
		<p>necessary, using the least amount required.</p> <ul style="list-style-type: none"> ■ Irrigation applications shall be consistent with turf grass evapotranspiration requirements. Over-watering shall be avoided. ■ No chemical application shall occur directly to any water body or within any of the prescribed setbacks and buffers from any water body. <p>Additionally, the CHAMP shall include a plan and commitment by the golf course owners/operators to provide on-going monitoring of water quality within the stream channels (Corralitos Creek) that flow through the project site and within the on-site lakes that have outfalls to the local drainage channel along Foothill Avenue. A monitoring and reporting program will be established by the RWQCB to enforce this requirement. At a minimum, the water quality sampling shall include monthly sampling of the golf course lakes and stream/drainage channels (above and below the project site) during the rainy season. Sampling shall include nutrients (nitrate and phosphorous) as well as all pesticides used for golf course maintenance. These data shall be reported to the City of Morgan Hill, the Santa Clara Valley Water District, and the Central Coast RWQCB on an annual basis.</p>			

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY[‡]	TIMING
28	On-going use and maintenance of the golf course will substantially increase existing nitrogen levels in the groundwater, which could adversely affect nearby drinking water wells, as well as the entire aquifer. Nitrogen loading impacts to downstream surface waters, including Corralitos Creek, San Martin Creek, and Llagas Creek, could also occur.	<p>Prepare a Nitrogen Control Plan (NCP). The NCP can be a component of the Chemical Application Management Plan (CHAMP). The NCP will determine the appropriate nitrogen application rates, based upon site specific soil testing and plant requirements and will account for all nitrogen application rates to the golf course, including fertilizer applications, grass clippings left in place, and nitrogen content of irrigation water. The nitrogen control plan shall include sufficient technical analysis, including monitoring data from the initial operation of the golf course, to demonstrate that the fertilizer and irrigation water applications to the golf course will not exacerbate the existing groundwater-nitrate problems in the project vicinity. Specifically, the nitrate loading from all sources shall be demonstrated to not exceed the estimated nitrate loading that would occur from pre-project conditions (19-41.2 mg/L). Nitrogen fertilizer application rates shall be adjusted to account for the nitrate levels in the groundwater-irrigation supply, based upon and verified through routine monitoring of irrigation waters. At a minimum, the monitoring shall include sampling for nitrate and total kjeldahl nitrogen no less than monthly. Application rates of fertilizers shall be determined based on irrigation rates and site-specific soil conditions and turf requirements. A soil and/or tissue sampling and monitoring program shall be implemented to determine appropriate application rates.</p>	<p>Prepare and submit a Nitrogen Control Plan separately or as part of a CHAMP to the City of Morgan Hill, SCVWD and RWQCB with payment of fees for review, approval and field verification. The NCP shall comply with the recommendations provided by these agencies.</p> <p>Any proposed changes to the fertilizer program shall be submitted to the same three agencies for review and approval, prior to implementation. The irrigation water monitoring program shall be in accordance with requirements established by the SCVWD and the RWQCB, and the tissue sampling will be performed in accordance with recommendations provided by SCVWD.</p> <p>Review plan and consult with RWQCB and SCVWD as appropriate. Verify that conformance with the plan will not result in increased nitrate loading, when compared with pre-project conditions. Approve NCP that meets mitigation standards identified in FEIR.</p> <p>Implement NCP approved by the City.</p>	<p>Project Proponent</p> <p>CDD</p> <p>Project Proponent</p>	<p>Submit with application for Site Development and Grading Permit by September 21, 2004</p> <p>With approval of Site Development and Grading Permit.</p> <p>After issuance of first permit.</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY[‡]	TIMING
		<p>The nitrogen fertilizer shall be slow release or less soluble form, whenever possible. Irrigation of the golf course shall be limited to the calculated crop evapotranspiration rate, plus mineral dilution requirement. Local weather conditions will be taken into consideration. Excessive irrigation shall be avoided. This will reduce potential leaching of nitrogen to the subsoil as well as reduce potential surface runoff from irrigation application.</p> <p>The timing of fertilizer application shall coincide with the period of greatest plant uptake and avoid periods of potential rainfall-runoff events.</p> <p>The overall amount of maintained turf shall be reduced, as needed, in order to minimize the total fertilizer requirements.</p> <p>Modify the golf course design as specified previously, including the provision of a buffer along all branches of Corralitos Creek, within which fertilizers will not be applied. Refer to California red-legged frog impact mitigation for more details on the buffer requirements. Modify the design of all sub-drains from tees and greens that discharge to Corralitos Creek to provide a minimum 25-foot vegetated buffer between the outfall point and the creek channel, or a filtration system with treatment equivalent to the 25-foot buffer, as approved by the City.</p> <p>Modify the golf course on Hole #3 to eliminate the turf covering the tributary drainage channel on the north side of Corralitos Creek near Lake G, and reestablish natural channel conditions, maintaining the previously described creek</p>			

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY[‡]	TIMING
		<p>buffer (Refer to California red-legged frog impact mitigation).</p> <p>Modify the drainage system and/or golf course design in the northwestern portion of the site to eliminate the flooding of the fairway catch basins.</p> <p>Account for all sources of nitrogen application to the golf course, including fertilizer, grass clippings, and the irrigation water.</p>			
29	Occupancy of the existing restaurant building could result in impacts to human safety.	The existing restaurant building is currently closed and will not be occupied until and unless the structural stability of the building is confirmed by a certified engineer.	<p>Submit verification of the structural stability of the restaurant building that is prepared by a certified engineer with necessary fees for review, approval, and field inspection by the City, prior to occupying the restaurant building.</p> <p>Review, approve and verify building structural stability.</p> <p>Make structural modifications shown on building permit application. Apply for and receive Certificate of Occupancy before any utilization of the structure.</p>	<p>Project Proponent</p> <p>Building Official</p> <p>Project Proponent</p>	<p>Concurrent with application for Site Development and Grading Permit by September 15, 2004</p> <p>Occupancy Permit</p> <p>Prior to occupancy</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY[‡]	TIMING
30	Construction and continued use of the golf course has eliminated red-legged frog, California tiger salamander, and western pond turtle habitat.	If any further grading occurs on-site for any purpose whatsoever, including implementation of required mitigation measures, silt fences, fiber rolls, or other structures will be installed to ensure that run-off from the operations does not flow directly into the on-site or downstream breeding areas. Any erosion control material must not contain plastic netting for any purpose.	A grading plan for any and all future grading will identify the specific measures that will be used to preclude contamination from grading from impacting any pond or creek segment. The plan will be submitted to the City with fees for review, approval and field verification. Verify adequacy and implementation of the plan.	Project Proponent DPW	Submit by September 21, 2004 Prior to issuance of any grading, demolition, or construction permits.
31	Construction and continued use of the golf course degraded riparian habitat.	Lighting within the riparian setback areas will not be allowed. All lighting on the site will be designed, sited and shielded to minimize light and glare impacts to wildlife within the riparian corridor.	Prepare and implement a lighting plan that addresses the mitigation standard. Submit the plan to the City of Morgan Hill Community Development Director with the necessary fees for review, approval and field verification. Verify adequacy and implementation of plan.	Project Proponent CDD	Submit with application for Site Development and Grading Permit by September 21, 2004 With approval of Site Development and Grading Permit.
32	Future construction on the project site could disturb nesting raptors, which could result in the loss of eggs, young or the reproductive effort.	Demolition and/or construction will be scheduled to avoid the nesting season (January through August) to the extent feasible. If it is not possible to schedule demolition and construction between August and January, then preconstruction surveys for nesting raptors will be conducted by a qualified ornithologist or wildlife biologist to ensure that no raptor nests will be	All future applications for grading, demolition, and construction plans will include provision for this mitigation measure, which will be submitted to the City of Morgan Hill Community Development Director with necessary fees for review, approval, and field verification.	Project Proponent	Submit with application for Site Development and Grading Permit by September 21, 2004 and prior to any future grading, demolition or construction.

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY[‡]	TIMING
		<p>disturbed during construction. This survey will be conducted no more than 14 days prior to the initiation of demolition/ construction activities during the early part of the breeding season (January through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). If an active raptor nest is found close enough to the construction/ demolition area to be disturbed by these activities, the ornithologist, in consultation with CDFG, will determine the extent of a construction-free buffer zone to be established around the nest.</p>	<p>Verify the consistency of plans submitted to the City with this mitigation measure.</p>	CDD	<p>With approval of Site Development & Grading Permit and Ongoing</p>
33	<p>The renovation and/or use of the existing restaurant building or other buildings on the site could disturb nesting swallows, which could result in the loss of eggs, young or the reproductive effort.</p>	<p>Avoid nesting season (February 15th and September 1st) construction, if possible. If it is not possible to avoid construction during the nesting season, remove all old nests in areas that would be disrupted by the proposed work before February 15th. Once the birds return, removal must be repeated at a frequency necessary to prevent nest completion until project construction is complete. Preconstruction surveys for nesting swallows will be conducted within 48 hours prior to the start of any construction, demolition, or renovation to ensure that swallows are not utilizing areas to be disturbed.</p>	<p>All future applications for grading, demolition and construction will include provision for on-site surveys by a qualified ornithologist, the results of which will be submitted to the City of Morgan Hill Community Development Director with necessary fees for review, approval, and field verification. Ongoing removal of nests will be supervised by the ornithologist, who will verify to the City at least monthly during construction that no destruction of birds or eggs has occurred.</p> <p>Review the submitted reports, confirm with field inspections as necessary during construction.</p>	<p>Project Proponent</p> <p>CDD</p>	<p>After issuance of Site Development and Grading Permit, but Prior to beginning grading, demolition, or construction</p> <p>Ongoing</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY [‡]	TIMING
34	The renovation and/or use of the existing restaurant building or the removal of large trees on the site may disturb or destroy roosting pallid and/or Townsend big-eared bats.	<p>A predemolition/preconstruction survey for roosting bats will be conducted by a qualified bat biologist three to 15 days prior to any demolition or renovation of buildings, particularly those with closed areas such as an attic space, or the removal of trees 12 inches in diameter at four and one-half feet above grade. No activities that would result in disturbance to active roosts would proceed prior to the completed surveys. If no active roosts are found, then no further action would be warranted. If a maternity roost is present, a qualified bat biologist would determine the extent of construction-free zones necessary around active nurseries. If either a maternity roost or hibernacula is present, the following mitigation measures will be implemented and CDFG would also be notified of any active nurseries within the construction zone:</p> <ul style="list-style-type: none"> ■ If active maternity roosts or hibernacula are found, the project would be redesigned, if possible, to avoid the disturbance of the building or tree occupied by the roost. ■ If an active maternity roost is located and the project cannot be redesigned to avoid disturbing the occupied tree or structure, construction activities would commence either before maternity colonies form (i.e., prior to March 1st) or after young are volant (i.e., after July 31st). The disturbance-free buffer zones necessary around a maternity roost, as determined by a qualified bat biologist in consultation with the CDFG, will be observed during the maternity roost season (March 1st - July 31st). 	<p>All future applications for grading, demolition and construction will include provision for on-site surveys by a qualified bat biologist, the results of which will be submitted to the City of Morgan Hill Community Development Director with necessary fees for review, approval, and field verification. Included with the plans will be either: (1) verification that any structures affected have been inspected by a qualified bat biologist who found no evidence of use by bats, or (2) a permit from the CDFG.</p> <p>Issue permit for bat removal/relocation as appropriate, or require delay until relocation/removal can safely occur.</p> <p>Review the submitted reports, confirm with field inspections as necessary. Confer with CDFG to confirm MOU and permit issuance, if appropriate.</p>	<p>Project Proponent</p> <p>CDFG</p> <p>CDD</p>	<p>Prior to issuance of any grading, demolition, or construction permits for any activities that would impact buildings or trees.</p> <p>Prior to disturbing bat colonies or roosting bats.</p> <p>Ongoing</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY[‡]	TIMING
		<ul style="list-style-type: none"> ■ If a non-breeding bat hibernacula is found in a structure or tree scheduled to be razed, the individuals will be safely evicted, under the direction of a qualified bat biologist (as determined by a Memorandum of Understanding with CDFG), by opening the roosting area to allow airflow through the cavity. Demolition will then follow no later than the following day (i.e., there shall be no less than one night between initial disturbance for airflow and the demolition). This action will allow bats to leave during dark hours, thus increasing their chance of finding new roosts with a minimum of potential predation during daylight. ■ Trees with roosts that need to be removed would first be disturbed at dusk, just prior to removal that same evening, to allow bats to escape during the darker hours. 			
35	The water supply may not be sufficient to serve proposed headquarters of the American Institute of Mathematics, which may result in property loss or a hazard to human life.	Augment existing water storage facilities on the project site (e.g., construct a water tank) to meet the fire protection water supply requirements as determined by the Fire Chief. The required amount of water storage will be a function of building size and construction type.	<p>Provide specific design plans and supporting calculations that proposed fire protection systems and water storage facilities will meet fire water supply requirements as determined by the Fire Chief</p> <p>Verify that plans were approved by the Fire Chief prior to issuance of any permits to modify or replace existing structure(s).</p>	<p>Project Proponent</p> <p>Building Official</p>	<p>Prior to issuance of a building permit for new structure or substantial remodel/expansion</p> <p>With issuance of building permit.</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY[‡]	TIMING
36	Future grading and ongoing operation of the existing on-site drainage system may increase soil erosion on the site.	<p>The project proponent must apply for and obtain the applicable state permits under the National Pollutant Discharge Elimination System (NPDES) and Storm Water Pollution Prevention Plan (SWPPP), as required by the State Water Resources Control Board for any grading for any purpose, including implementation of required mitigation measures.</p> <p>The project proponent shall prepare an Erosion Control Plan (ECP) that includes all applicable elements of the SWPPP, and which will be submitted to the City of Morgan Hill and the Central Coast RWQCB. Erosion control measures shall be established in conformance with the City of Morgan Hill Grading Ordinance, RWQCB regulations, and local guidelines for non-point source runoff Best Management Practices for construction. The Erosion Control Plan shall include the following measures:</p> <ul style="list-style-type: none"> ▪ Use of fiber rolls and temporary sedimentation basins to retain sediment on the project site; ▪ Protecting all finished graded slopes from erosion through revegetation, drainage diversion, and other appropriate methods; Hydrology and Water Quality Continued Protecting any downstream storm drainage inlets from sedimentation; and ▪ No construction activity that includes grading, soil movement or excavation, or which could result in any soil erosion shall occur during the winter rainy season (October 15th to April 15th), without written 	<p>Prepare and submit SWPPP and ECP and supporting documents and revised plans necessary to meet the standards identified in the mitigation measure to the RWQCB and the City of Morgan Hill with appropriate fees for review, approval, and field verification.</p> <p>Issue NPDES Permit</p> <p>Review and verify RWQCB concurrence or approval prior to issuance of any grading or building permits or approval of plans submitted.</p> <p>Inspect project site during and after the construction period to ensure that the erosion control techniques are installed and are performing as designed, especially after major winter storm events.</p> <p>Install erosion control features identified in ECP. Maintain site during grading as required by grading permit and ECP. After completion of grading, revegetate as shown on ECP and Mitigation Planting and Grading Plan.</p> <p>Removal of sediment from natural creek channels should be accomplished during the dry season. Any activity in the natural creek channels may require a permit or waiver from the RWQCB,</p>	<p>Project Proponent</p> <p>RWQCB</p> <p>DPW and Building Official</p> <p>Project Proponent</p>	<p>Prior to any further grading or construction occurring.</p> <p>Upon receiving complete application</p> <p>Prior to issuance of Site Development and Grading Permit</p> <p>With first permit issuance, during, and after construction.</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY [‡]	TIMING
		<p>approval from the City Engineer for the City of Morgan Hill.</p> <p>During construction, the roadside drainage ditches and stream channels that border and run through the project site shall be inspected for accumulated sediment. The project proponent shall be responsible for the clearing of accumulated debris and sediment within these channels prior to each winter rain.</p> <p>Following construction, a program shall be established for insuring maintenance of culverts, drain inlets, energy dissipaters, etc., and for erosion control during maintenance grading activities in conformance with the Santa Clara County Grading Ordinance, RWQCB regulations, and Non-Point Source Program Best Management Practices.</p>	<p>which must be obtained prior to work occurring.</p>		
37	<p>The proposed project may result in significant short-term noise impacts during any future construction.</p>	<p>The following measures have been identified to mitigate temporary noise impacts to a less than significant level:</p> <ul style="list-style-type: none"> ■ Per the City of Morgan Hill Noise Ordinance, noise-generating construction activities are prohibited other than between the hours of 7:00 AM to 8:00 PM, Monday through Friday, and between the hours of 9:00 AM and 6:00 PM on Saturday. ■ Construction activities may not occur on 	<p>Implement all measures necessary to conform to the City of Morgan Hill Noise Ordinance, and inclusion of other noise suppression measures as required by this mitigation measure in the FEIR.</p> <p>Verify that construction includes implementation of all measures required by this mitigation measure in the FEIR</p>	<p>Project Proponent</p> <p>CDD</p>	<p>Prior to issuance of any grading or building permits.</p> <p>During construction.</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY[‡]	TIMING
		<p>Sundays or federal holidays.</p> <ul style="list-style-type: none"> Construction operations will use available noise suppression devices and techniques, and equipment will be properly muffled and maintained. 			
38	<p>The existing structures on the project site may contain ACMs or lead based paint. Demolition or remodeling may release air-borne asbestos and/or lead dust, causing a significant impact to workers or other persons in the area.</p>	<p>Prior to obtaining a building permit for any future renovation or demolition of existing buildings on the project site, verification that the buildings were inspected for lead based paint and asbestos containing materials (ACMs) will be required by the City of Morgan Hill during the building permit process. If any of these contaminants are found, they would be removed in accordance with OSHA and the Department of Toxic Substances (DTSC) standards.</p>	<p>Inspect for lead based paint and ACMs prior to renovation or demolition of existing buildings on the project site. Provide results of surveys to Building Office concurrent with application for first building or demolition permit.</p> <p>Verify that any and all buildings to be demolished or modified were inspected for lead based paint and ACMs. Review removal and disposal plans, including verification of contractor's qualification where required by law.</p>	<p>Project Proponent</p> <p>Building Official</p>	<p>Prior to renovation or demolition of existing buildings on the project site.</p> <p>With issuance of building or demolition permit.</p>
39	<p>Construction of any remaining components of the proposed project could result in significant short term air quality impacts associated with dust generation.</p>	<p>The following construction practices would reduce construction related air quality impacts to a less than significant level:</p> <ul style="list-style-type: none"> Dust-proof chutes would be used for loading construction debris onto trucks. Watering would be used to control dust generation during demolition of structures and break-up of pavement. Cover all trucks hauling demolition debris from the site. Water all active construction areas at least twice daily or use non-toxic soil binders.. Water use should be in quantities to not generate runoff. Water, cover, or use soil binders on stockpiles of debris, soil, sand or other materials that can be blown by the wind. 	<p>Prepare construction and grading plans. Require contractor(s) to implement BAAQMD construction measures.</p> <p>Verify BAAQMD measures are reflected in permit applications and are implemented during construction.</p>	<p>Project Proponent</p> <p>Building Official/DPW</p>	<p>Prior to issuance of any permits.</p> <p>Prior to issuance of any permits and during all grading and construction</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY [‡]	TIMING
		<ul style="list-style-type: none"> ▪ Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard. ▪ Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking, and staging areas at construction sites. ▪ Sweep daily (preferably with water sweepers) all paved access road, parking areas and staging areas at construction sites. Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets. Water application by sweepers should not result in runoff. ▪ Hydroseed or apply non-toxic soil stabilizers to inactive construction areas. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.). ▪ Install sandbags or other erosion control measures to prevent silt runoff to public roadways. ▪ Replant vegetation in disturbed areas as quickly as possible. 			
40	[‡] The following are included in this column: <div style="display: flex; justify-content: space-between;"> <div> CDD DPW RWQCB SCVWD USFWS USACE CDFG </div> <div> Community Development Director, City of Morgan Hill Director of Public Works, City of Morgan Hill Central Coast Regional Water Quality Control Board Santa Clara Valley Water District United States Fish and Wildlife Service United States Army Corps of Engineers California Department of Fish and Game </div> </div>				



CITY COUNCIL STAFF REPORT
MEETING DATE: JULY 21, 2004

Agenda Item # 20

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1687, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT ON A 192±-ACRE SITE CHANGING THE ZONING DESIGNATION FROM OPEN SPACE (OS) TO PLANNED UNIT DEVELOPMENT (PUD) LOCATED AT 14830 FOOTHILL AVENUE BETWEEN MAPLE AVENUE AND ROBIN AVENUE. (APNS 825-29-002, 043, 044, 045 AND 825-30-007)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1687, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On July 7, 2004, the City Council Introduced Ordinance No. 1687, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

No budget adjustment required.

ORDINANCE NO. 1687, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT ON A 192±-ACRE SITE CHANGING THE ZONING DESIGNATION FROM OPEN SPACE (OS) TO PLANNED UNIT DEVELOPMENT (PUD) LOCATED AT 14830 FOOTHILL AVENUE BETWEEN MAPLE AVENUE AND ROBIN AVENUE. (APNS 825-29-002, 043, 044, 045 AND 825-30-007)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. An environmental impact report has been prepared for this application and has been found complete, correct and in substantial compliance with the California Environmental Quality Act.

SECTION 4. The City Council hereby approves a precise development plan as contained in that certain series of documents dated March 3, 2003 on file in the Community Development Department, entitled "American Institute of Mathematics" prepared by Stotler Design Group. These documents, as amended by site and architectural review, show the exact location and dimensions of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project.

SECTION 5. The City Council hereby amends the City Zoning Map as shown in attached Exhibit "A."

SECTION 6. Approval of The Institute PUD shall allow the specific uses identified in the applicant's "Use Data Table", attached hereto as Exhibit "B", and by this reference incorporated herein. Those uses shall include the following:

1. AIM Research Center (includes research facility, library, conference rooms, guest suites, lecture halls, food service, offices, pro shop, locker rooms) (59,000 square feet)
2. Golf course (128 acres)
3. Residence
4. Offices
5. Lecture hall
6. Caretaker's quarters

7. Equipment storage
8. Maintenance sheds
9. Food service
10. Guard building
11. Pro shop
12. Restrooms
13. Open Space

SECTION 7. Development of this PUD shall be in accordance with the development standards for PUDs, Chapter 18.30 of the Zoning Code, identified herein by reference in the resolution.

SECTION 8. Approval of this PUD does not include approval of “charity golf tournaments” as identified in the applicant’s use table, as such use has not been evaluated for its potential environmental impacts. Such use will require amendment to the approved PUD upon further environmental review.

SECTION 9. Conditions of Approval. The Zoning Amendment hereby approved shall be subject to the conditions contained in the attached Exhibit “C.”

SECTION 10. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 11. Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 7th Day of July 2004, and was finally adopted at a regular meeting of said Council on the 21st Day of July 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1687, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21st Day of July 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

City of Morgan Hill
Ordinance No. 1687
EXHIBIT “C”:

**Conditions of Approval, Including Mitigation Measures Not Presently
Incorporated Into The Proposed Project.**

- _____ 1. A geotechnical report prepared by a certified engineering geologist or civil engineer shall be submitted for review and approval by the City of Morgan Hill Director of Public Works to verify the stability of the existing earthwork on the project site, except for the berm along Foothill Avenue and the berm along the southern edge Pond G. If the existing earthwork is not found to be structurally sound and capable of resisting erosion and/or collapse, the grades shall be reworked in conformance with an engineered plan approved by the Director of Public Works.
- _____ 2. Red-legged Frog Mitigation Measure Package I
 - A. Implement USFWS Mitigation Recommendations - Implement all mitigation measures included in the USFWS letter of July 15, 2003 (Appendix C of this EIR) to reduce impacts to the California red-legged frog, as summarized below:
 1. Purchase 51 acres of currently unprotected serpentine habitat and fund its management as habitat in perpetuity.
 2. Purchase 51.2 acres of currently unprotected California red-legged frog habitat and fund its management as habitat in perpetuity.
 3. A riparian buffer with an average width of 70 feet and a minimum width of 30 feet will be planted and maintained on each side of Corralitos Creek and its tributaries, measured from the centerline of the creek.
 4. As stated in the July 15, 2003 letter from the USFWS, the 35 acres of serpentine habitat located in Kirby Canyon is of exceptional quality. If after evaluation the City of Morgan Hill agrees with the USFWS that this 35 acres of replacement habitat is equivalent to the mitigation requirement of 51 acres of serpentine habitat due to exceptional quality, and also provides 35 acres of red-legged frog habitat, then only 16.2 additional acres of currently unprotected red-legged frog habitat will need to be purchased and funded for management as habitat in perpetuity.
 - B. Manage Non-Native Predator Species - Bullfrogs and large mouth bass are non-native predators that reduce the long-term viability of a California red-legged frog population. Although only one bullfrog was detected on the project site, a non-native predator management plan that operates for the life of the golf course operation shall be implemented. The main components of this plan are to: 1) monitor all ponds for bullfrogs and other non-native predators on an annual basis, and 2) dry out any ponds that contain bullfrogs for two to three weeks in late September/early October on an annual basis. Only ponds that are found to contain one or more bullfrogs need to be drained. The timing of the draw down will be phased to ensure that California red-legged frogs will continue to have available suitable wet areas. Pond draining disrupts the two-year development cycle of the bullfrog and should substantially reduce or eliminate successful reproduction by bullfrogs.

- C. Vegetated Buffers Around Ponds - All ponds on site shall have a buffer around the pond perimeter of at least 10 feet in width, which may consist of un-maintained dense grasses, planted ground cover or mulch, so long as the criteria set forth herein are satisfied. This buffer will not be mowed or maintained with mechanized equipment, nor will any chemicals or fertilizers be applied to the surface, and it will be designed to absorb and retard surface flow and to act as a filter for the surface flow. The buffers shall be subject to the approval of the City to ensure that they satisfy these criteria. Fertilizer may be applied if necessary through a below ground drip irrigation system. This buffer is significantly narrower than the buffer cited under Mitigation Package II because Mitigation Package I also provides for substantial additional off-site habitat benefits as described in USFWS letter dated July 15, 2003 that compensate for the smaller on-site buffer areas.
- D. Maintain Water Quality of Breeding Ponds/Establish Vegetated Shelves Around Ponds - Water quality shall be monitored monthly for the duration of the golf course operation by qualified personnel to ensure that golf course run-off does not impact breeding habitat for the California red-legged frog. Shallow water shelves shall be constructed and vegetated with native emergent vegetation around the perimeter of ponds A, B, C, D, E, F and G. Native emergent vegetation shall be established on at least 50 percent of the total linear feet of pond edge (Exhibit ____) and shall be approximately 5 to 10 feet in width. These vegetated shelves will provide refugia and breeding habitat for the California red-legged frogs. This vegetation will also provide some biological filtering of run-off water. Catch basins and other storm drain outlets shall not empty directly into any drainages leading to these ponds, but rather, flow through vegetated buffers, filter strips, swales, or other treatment measures which provide equivalent filtration and are subject to the approval of the City, prior to entering ponds or empty downstream of any waterways associated with potential breeding habitats. If any further grading occurs, silt fences, fiber rolls, or other structures shall be installed to ensure that run-off from the operations does not flow directly into these breeding areas.
- E. Water Quality Setback from Corralitos Creek - Both the USFWS and H.T. Harvey and Associates identified buffers to avoid wildlife disturbance. As stated in Section II., D., Hydrology and Water Quality of this EIR, a minimum setback is necessary to avoid significant impacts to the creek from pollutants in surface runoff. This "setback area" shall be either (1) 50 feet from the centerline of Corralitos Creek and tributaries, or (2) 30 feet as measured along the ground surface to the highest anticipated water line of the Creek and tributaries as jointly determined by the RWQCB and the City.
- F. To reduce the water quality setback area required in Section 2.E without resulting in significant water quality impacts, the areas adjacent to the on-site creek channels shall drain away from the creek. The surface water shall simply drain back over the golf course as sheet flow, or it shall drain to a drainage system that drains to the creek or the internal ponds consistent with Section 2.D above. This reduction shall be implemented through either: (a) the preparation of a detailed topographic survey completed by a registered civil engineer or licensed land surveyor that confirms that the existing ground surfaces within the setback area required by Section 2.E for Corralitos Creek and all tributaries within the boundaries of the project site drain away from the creek banks, or (b) the preparation of a grading plan that demonstrates that all of the on-site ground surfaces within the setback area required by Section 2.E for all of the creek channels on the project site will be re-graded to achieve the same performance standard, or some combination of these two scenarios (a and b). The drainage pattern shall be achieved through surface grades, or

a combination of surface grades and catch basin/storm drain systems. Under no circumstance shall the setback from the creek channels be reduced below 30 feet from the centerline of the creek, except for the fairway of the 6th hole, as described below.

1. The setback from Corralitos Creek within the fairway of the 6th hole will be reduced to 20 feet on the south side of the creek and will adhere to the measures described above in Section 2.F for reduced setback areas. The setback from the north side of the creek on the 6th hole will be at least 70 feet to compensate for the reduced setback along the south side of the creek.

G. All mechanized equipment used to maintain the grounds shall only be used during the daylight hours.

H. Monitoring of the on-site population of red-legged frogs shall be done for at least five years after implementation of the program, and the results of the monitoring reported to the City of Morgan Hill and the USFWS.

_____ 3. California Tiger Salamander Mitigation Measure Package I

A. Mitigation Measure Package I as described above for the California red-legged frog shall also provide adequate mitigation for the California tiger salamander.

_____ 4. Western Pond Turtle Mitigation Measure Package I

A. Mitigation Package I as described previously for the California red-legged frog shall also provide adequate mitigation for western pond turtles.

_____ 5. Riparian Habitat

A. The riparian habitat and drainages offer different wildlife values, therefore, a 25-foot setback from the lower-quality riparian habitat, and a 100-foot setback from the higher quality riparian habitat is necessary to protect the remaining riparian corridor that is well vegetated and of higher quality, except where mitigation for reduction in the riparian setback is provided as required in paragraph G below;

B. The setback area shall be established as a riparian buffer planting zone with native trees and shrubs, such as native oaks and willows. The landscape plans shall be reviewed and approved by a qualified botanist or restoration biologist under contract with the City with services paid for by the project proponent;

C. Lighting within the setback areas should be avoided. Lighting associated with the proposed project shall be designed, sited and shielded to minimize light and glare impacts to wildlife within the riparian corridor; and

D. Human access shall be restricted within the riparian corridor. Signs explaining the sensitivity of riparian corridors will be posted along the riparian corridor particularly near possible or likely access points. The property owner will promulgate rules of play that prohibit entering the riparian corridor.

E. It should be noted that the riparian corridor setbacks described above are different than the creek setbacks described previously to protect special-status species (red-legged frog, tiger salamander, and western pond turtle). The riparian corridor setbacks (100 feet for high quality riparian habitat and 25 feet for low quality riparian habitat) are measured from the edge of the riparian corridor. The setbacks for impacts to special-status species are measured from the centerline of the creek channels, and the water quality setbacks are measured from the highest anticipated water line of the creek channels.

F. The riparian setbacks identified above (100 feet from high quality habitat, 25 feet from poor quality habitat) are methods for reducing or avoiding habitat degradation. If encroachment within the identified setbacks is allowed by the City, mitigation (described below) shall be required to offset the impacts to habitat quality that would result from the encroachment.

G. Mitigation for Reduction of Riparian Habitat Setbacks: An area of riparian habitat that is equivalent in size to the area of the encroachment(s) proposed into the setbacks, shall be provided at a 1:1 ratio elsewhere along the same drainage. Uses or activities within the encroachment areas within the 100-foot riparian setbacks should be limited to roughs and fairways to within 25 feet of the edge of the riparian habitat; un-maintained rough may be as close as 15 feet to the edge of the riparian habitat. The tees and greens that are retained in the encroachment area will be mitigated by the re-establishment and protection of riparian habitat at a 2:1 ratio (replacement: impacted) that is within three miles of the encroachment and within the Llagas Creek watershed. Any such off-site riparian re-establishment project(s) could require subsequent CEQA review. A revegetation and maintenance plan prepared by a qualified revegetation ecologist that illustrates: (a) all planting within 100 feet of the edge of the riparian habitat, and (b) all replacement riparian habitat proposed as mitigation for riparian habitat lost and for encroachments into the riparian habitat setback, shall be submitted to and approved by the City of Morgan Hill as part of the Site, Architectural and Landscape Plan Review process.

H. Prior to approval of a grading permit for the subject property, the project proponent shall be required by the City of Morgan Hill to obtain from the U.S. Army Corps of Engineers, and provide to the City of Morgan Hill Director of Planning, a determination that no jurisdictional wetlands will be impacted by the proposed grading or construction.

_____ 6. Off-site Flooding and Drainage

A. In order to mitigate the localized flooding problems at Foothill Avenue in the vicinity of the entrance road caused by the project, the project proponent shall re-design the drainage system for the golf course to reduce the peak runoff flows to levels that are equal to or less than pre-development conditions and prevent uncontrolled runoff onto Foothill Avenue within the frontage area of the project site. This shall require the following:

1. Redesign the drainage system to provide storm water detention capability for the runoff from the Maintenance drainage area in order to assure that the peak runoff flow from this area of the site does not cause concentrated uncontrolled runoff onto Foothill Avenue; this shall include a revised hydrologic analysis verifying adequate capacity for the relevant sections of the storm drain system, and updated detention analysis for Lakes A through E;

2. The redesign of the on-site drainage system for the project site, including the revised drainage analysis and detention basin analysis, shall be subject to review and approval by the Santa Clara Valley Water District and the City of Morgan Hill.

_____ 7. Soil Erosion

A. Erosion and sedimentation impacts from the proposed project would generally result from construction on the site. It is also likely that on-going maintenance of the golf course will occasionally include excavating, drainage and grading work. Construction-related erosion and sedimentation shall be mitigated by the implementation of the following measures:

B. The project proponent shall apply for and obtain the applicable state permits under the National Pollutant Discharge Elimination System (NPDES), as required by the State Water Resources Control Board for any grading of more than one acre; this includes the preparation of a Storm Water Pollution Prevention Plan prior to any additional work necessary to reduce flooding and drainage impacts.

C. The project proponent shall prepare an Erosion Control Plan for review and approval by the City of Morgan Hill and the Central Coast RWQCB prior to any construction or grading on the site. Erosion control measures shall be established in conformance with the City of Morgan Hill Grading Ordinance, RWQCB regulations, and local guidelines for non-point source runoff Best Management Practices for construction. The Erosion Control Plan shall include the following measures:

1. use of fiber rolls and temporary sedimentation basins to retain sediment on the project site;
2. protecting all finished graded slopes from erosion through re-vegetation, drainage diversion, and other appropriate methods;
3. protecting any downstream storm drainage inlets from sedimentation; and
4. No construction activity that includes grading, soil movement or excavation, or which may result in any soil erosion shall occur during the winter rainy season (October 15th to April 15th), without written approval from the City Engineer for the City of Morgan Hill.

D. Inspection shall be conducted by City of Morgan Hill during the construction period to ensure that the erosion control techniques are performing as designed. Erosion control features shall be checked after major winter storm events.

E. Following completion of construction, the roadside drainage ditches and stream channels that border and run through the project site shall be inspected for accumulated sediment. The project proponent shall be responsible for the clearing of accumulated debris and sediment within these channels prior to each winter rain.

F. Following construction, a program shall be established for insuring maintenance of culverts, drain inlets, energy dissipaters, etc., and for erosion control during maintenance grading activities in conformance with the Santa Clara County Grading Ordinance, RWQCB regulations, and Non-Point Source Program Best Management Practices.

_____ 8. Water Quality

A. Non-Point Source Runoff Pollutants

1. Provide containment dikes around maintenance areas, and provide roofing over any area where the potential for oil, grease and fuel spillage is high;
2. Provide oil/grease separators for all catch basins within the parking area drainage system;
3. Monitor the grounds to control litter and other debris that could be washed into the on-site ponds or drainages (i.e., weekly street sweeping, oil spill clean-up, etc.);
4. Modify the golf course design along the riparian corridor of Corralitos Creek to provide the setback area required in Section 2.E that contains only native grasses and non-maintained rough for the capture and treatment of surface runoff pollutants, and a similar buffer of 10 feet around all on-site ponds/streams. The CHAMP shall include monthly monitoring for water quality and shall contain provisions for reporting of accidental chemical releases.

An alternative to providing the minimum setback area described in Section 2.E above is to ensure that the areas within such setback area drain away from the creek channels. This will allow the water quality setback to be less than the setback area required in Section 2.E without resulting in significant water quality impacts. The surface water shall simply drain back over the golf course as sheet flow, or it shall drain to a catch basin system that drains to the internal ponds. This mitigation shall be implemented through either: (a) the preparation of a detailed topographic survey completed by a registered civil engineer or licensed land surveyor that confirms that the existing ground surfaces within the Section 2.E setback area of all creek channels within the boundaries of the project site drain away from the creek banks, or (b) the preparation of a grading plan that demonstrates that all of the on-site ground surfaces within the Section 2.E setback area of all of the creek channels on the project site will be re-graded to achieve the same performance standard, or some combination of these two scenarios (a and b). The drainage pattern shall be achieved through surface grades, or a combination of surface grades and catch basin/storm drain systems. Under no circumstances shall the setback from the creek channels be reduced below 30 feet from the centerline of the creek, except for the fairway of the 6th hole, as described below.

- The setback from Corralitos Creek within the fairway of the 6th hole will be reduced to 20 feet on the south side of the creek and will adhere to the measures described above for reduced setback areas. The setback from the north side of the creek on the 6th hole will be at least 70 feet to compensate for the reduced setback along the south side of the creek.
5. Adopt and implement as part of on-going site operations, all applicable mitigation measures identified for soil erosion (refer to page 70 of the Revised Draft EIR).

B. Nitrogen Loading

1. The project proponent shall prepare a nitrogen control plan (NCP) which is based upon a determination of appropriate nitrogen application rates, based upon site specific soil testing and plant requirements. The NCP shall be a component of the Chemical Application Management Plan (CHAMP) described under the heading "Pesticides and Herbicides" below.

2. The NCP shall include annual accounting of all sources of nitrogen application rates to the golf course, including fertilizer applications, grass clippings left in place, and nitrogen content of irrigation water.
3. The Nitrogen Control Plan (NCP) shall include sufficient technical analysis, including monitoring data from the initial operation of the golf course, to demonstrate that the fertilizer and irrigation water applications to the golf course will not exacerbate the existing groundwater-nitrate problems in the project vicinity. Specifically, the nitrate loading from all sources shall be demonstrated to not exceed the estimated nitrate loading that would occur from pre-project conditions (i.e., the nitrogen loading on the whole site when it contained a 40-acre golf course, which is estimated in the EIR to be 19 to 41.2 mg/L).
4. The project proponent shall submit the Nitrogen Control Plan, including comparison to pre-project nitrate loading estimates, to the Santa Clara Valley Water District (SCVWD) and the Central Coast RWQCB for review and approval, and shall obtain and comply with recommendations provided by these agencies. Additionally, any proposed changes to the fertilizer program, not already addressed in the NCP, shall be submitted to these agencies for review and approval prior to implementation.
5. Nitrogen fertilizer application rates shall be adjusted to account for the nitrate levels in the groundwater-irrigation supply based upon and verified through routine monitoring of irrigation waters. The irrigation water monitoring program shall be in accordance with requirements established by the SCVWD and the RWQCB; at a minimum, the monitoring shall include sampling for nitrate and total kjeldahl nitrogen no less than monthly.
6. Application rates of fertilizers shall be determined based on irrigation rates and site-specific soil conditions and turf requirements. A soil and/or tissue sampling and monitoring program shall be implemented to determine appropriate application rates, in accordance with recommendations provided by the SCVWD.
7. Fertilizer application shall be consistent with the CHAMP. The nitrogen fertilizer shall be slow release or less soluble form, whenever possible.
8. Irrigation of the golf course shall be limited to the calculated crop evapotranspiration rate, plus mineral dilution requirement. Local weather conditions will be taken into consideration. Excessive irrigation shall be avoided. This will reduce potential leaching of nitrogen to the subsoil as well as reduce potential surface runoff from irrigation application.
9. The timing of fertilizer application shall coincide with the period of greatest plant uptake and avoid periods of potential rainfall-runoff events.
10. The overall amount of maintained turf shall be reduced, as needed, in order to minimize the total fertilizer requirements and achieve the goal identified in item #3 above.
11. Modify the golf course design as specified previously, including the provision of the setback area required in Section 2.E of native grasses and non-maintained rough along all branches of Corralitos Creek, within which fertilizers will not be applied.

12. The setback area referenced in Section 8.B.11 above may only be reduced in a manner that is consistent with the restrictions reflected above in the non-point source pollutants setback.
13. Modify the design of all sub-drains from tees and greens that discharge to Corralitos Creek to provide a minimum 25-foot vegetated buffer between the outfall point and the creek channel, or a filtration system with treatment equivalent to the 25 foot vegetated buffer, as approved by the City.
14. Modify the golf course on Hole #3 to eliminate the turf covering the tributary drainage channel on the north side of Corralitos Creek near Lake G, and reestablish natural channel conditions, maintaining the setback area required in Section 2.E above between the turf grass and the creek channel.
15. Modify the drainage system and/or golf course design in the northwestern portion of the site to eliminate the flooding of the fairway catch basins.

C. Pesticide and Herbicides

1. The golf course operator shall prepare a Chemical Application Management Plan (CHAMP). This plan shall detail the procedures to construct, operate and maintain the golf course and shall provide public disclosure regarding pesticides, fertilizers and other chemicals to be used on the golf course, as well as methods of application and handling. The CHAMP shall be subject to review and approval by the City of Morgan Hill and the Central Coast RWQCB. In addition to the measures incorporated into the proposed golf course layout and design, the following provisions shall be considered for inclusion in the CHAMP and reasons identified for a failure to include any measures:
 - a. Drought, pest, and disease resistant grass species shall be selected;
 - b. Pesticides shall be handled, applied, and disposed of by a licensed (State-certified) spray technician;
 - c. Only approved and legal chemicals shall be used. All county, state, and federal guidelines shall be strictly adhered to regarding storage, handling, and application of pesticides;
 - d. Advanced technology/monitoring equipment shall be used to insure minimal application of pesticides, herbicides, and fertilizers. This equipment shall be maintained and properly calibrated;
 - e. A controlled and designated area/facility shall be used for the proper mixing and loading of pesticides into application equipment. The facility shall consist of an impermeable pad with controlled and contained drainage, and shall be at least 50 feet from open ditches, ponds or other water bodies. Rinse water shall be properly stored and hauled for disposal at an approved facility.
 - f. Selection of pesticides shall be based on the ability to achieve treatment goals and criteria to minimize off-site movement. Selection of less toxic, less mobile, and less persistent pesticides shall be a priority management criterion.

- g. Pesticide applications shall be carefully timed and combined with other pest management practices; pests shall be accurately identified and pesticide applications made only when necessary, using the least amount required.
- h. Pesticides shall not be applied during the rainy season, when soil moisture is high. Applications shall be restricted prior to any anticipated late or early season storm events to preclude potential impacts from runoff.
- i. Irrigation applications shall be consistent with turf grass evapotranspiration requirements. Over-watering shall be avoided.
- j. As described previously, modify golf course design to provide enhanced vegetative buffer areas for retention of pesticide residue, including the following:
 - * Modify the golf course design along the riparian corridor of Corralitos Creek to provide the setback area required by Section 2.E above or a modified setback similar to that described under Non-Point Source Runoff Pollutants above, that contain only native grasses and non-maintained rough for the capture and treatment of surface runoff pollutants, and a similar buffer of 10 feet around all on-site ponds/streams. The CHAMP shall include monthly monitoring for water quality and shall contain provisions for reporting of accidental chemical releases.
 - * Modify the design of all sub-drains from tees and greens that discharge to Corralitos Creek, to provide a minimum 25-foot vegetated buffer (non-turf grass) between the outfall point and the creek channel or a filtration system with treatment equivalent to the 25-foot vegetated buffer, as approved by the City.
 - * Modify the golf course on Hole #3 to eliminate the turf covering the tributary drainage channel on the north side of Corralitos Creek near Lake G, and reestablish natural channel conditions, maintaining the setback area required in Section 2.E above between the turf grass and the creek channel.
- k. As described previously in Section 8.A.4 above, there is an alternative to providing the setback area required in Section 2.E above. To reduce the water quality setback to below such setbacks without resulting in significant water quality impacts, the areas adjacent to the drainage channel shall drain away from the creek. The surface water shall simply drain back over the golf course as sheet flow, or it shall drain to a catch basin system that drains to the internal ponds. This mitigation shall be implemented through either: (a) the preparation of a detailed topographic survey completed by a registered civil engineer or licensed land surveyor that confirms that the existing ground surfaces within the Section 2.E setback area of all creek channels within the boundaries of the project site drain away from the creek banks, or (b) the preparation of a grading plan that demonstrates that all of the on-site ground surfaces within the Section 2.E setback area of all of the creek channels on the project site will be re-graded to achieve the same performance standard, or some combination of these two scenarios (a and b). The drainage pattern shall be achieved through surface grades, or a combination of surface grades and catch basin/storm drain systems. Under no circumstances shall the setback from the creek channels be reduced below 30 feet from the centerline of the creek except for the fairway on the 6th hole, as described below.
 - The setback from Corralitos Creek within the fairway of the 6th hole will be reduced to 20 feet on the south side of the creek and will adhere to the measures described above for

reduced setback areas. The setback from the north side of the creek on the 6th hole will be at least 70 feet to compensate for the reduced setback along the south side of the creek.

2. Modify the drainage system and/or golf course design in the northwestern portion of the site to eliminate the flooding of the fairway catch basins.
3. Additionally, the CHAMP shall include a plan and commitment by the golf course owners/operators to provide on-going monitoring of water quality within the stream channels (Corralitos Creek) that flows through the project and within the on-site lakes that have outfalls to the local drainage channel along Foothill Avenue. A monitoring and reporting program shall be established by the RWQCB to enforce this requirement. At a minimum, the water quality sampling shall include monthly sampling of the golf course lakes and stream/drainage channels (above and below the project site) during the rainy season. Sampling shall include nutrients (nitrate and phosphorous) as well as all pesticides used for golf course maintenance. These data shall be reported to the City of Morgan Hill, the Santa Clara Valley Water District, and the Central Coast RWQCB on an annual basis.
4. The CHAMP shall be subject to review and approval or concurrence by the City of Morgan Hill, the SCVWD, and the Central Coast RWQCB (If the RWQCB accepts regulatory authority for the CHAMP, reports to the City and SCVWD may be informational only).

_____ 9. Lake Water Quality Management and Discharges

Implementation of the following measures will reduce impacts associated with lake water quality management and discharges to a less than significant level:

- A. The project proponent shall apply for and obtain an NPDES "General Permit for Discharges with Low Threat to Water Quality" from the Central Coast RWQCB for all of the on-site lakes, except where they are designed and operated to assure no discharge. This will require the submittal of standard information required by the General Permit, in addition to other information that may be required by the RWQCB.
- B. If any lakes are used as complete retention lakes, the project proponent shall develop and submit an operations plan, including supporting calculations, operating criteria, and other information as may be deemed necessary by the RWQCB, to verify that the lakes have capacity for and will be operated to contain the 100-year, 60-day runoff from the contributing drainage area.
- C. The project proponent shall also include identification of any chemicals added to the lakes for water quality control or other reasons, as provided by Application Requirement 1b (1) in the General Permit. The project proponent shall also comply with all provisions of the General Permit, including monitoring and reporting provisions established by the RWQCB.

_____ 10. Domestic Water Supply

In order to provide a suitable supply of domestic water for the project one of the following shall be done prior to issuance of building permits for the proposed Mathematics Institute:

- A. apply for and obtain approval for connection to an approved public water system, including the completion of any required environmental review for water system extension; or
- B. complete a comprehensive investigation and analysis of the hydrogeology and groundwater quality on the site to verify that a supply of domestic water of acceptable quality (per Title 22 Drinking Water Standards) can be provided for the life of the project; the results of this analysis shall be subject to review and approval by the State Department of Health Services and the Santa Clara County Health Department; or
- C. modify the project to eliminate the need for provision of a public water supply; a "public water supply" is defined by Title 22 as "... a system for the provision of piped water to the public for human consumption that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year."
- D. If the last option is selected, mitigation of the high groundwater-nitrate concentrations will require that the project proponent supply a safe and suitable drinking water supply that complies with all applicable drinking water quality limits; however, this could be met by the project proponent through the inclusion of a water treatment system or importation of certified potable water that will not necessarily qualify as a "public water system".

_____ 11. Fire Protection Water Supply

- A. Prior to issuance of building permits for renovating the existing restaurant building for its use as the headquarters for the American Institute of Mathematics, the project proponent shall augment existing water storage facilities on the project site (e.g., construct a water tank) to meet the fire protection water supply requirements as determined by the Fire Chief. The required amount of water shall be a function of building size and construction type.

_____ 12. Groundwater Resource Depletion

The significant impact of the golf course irrigation on groundwater resources in the project vicinity shall be mitigated by implementing one of the following measures:

- A. Reduce the amount of irrigated turf within the golf course to a maximum of approximately 85 to 100 acres of total turf and associate landscaped area, or otherwise reduce the irrigation water demand of the existing golf course by approximately 50 percent. The as-built golf course currently has approximately 128 acres of irrigated turf, including tees, greens, fairways and rough, plus approximately 50 additional acres of irrigated trees and other landscaping. This is a relatively large amount of turf for an 18-hole golf course. There are examples of golf courses recently constructed in the region with as little as 50 acres of irrigated turf. Reduction of the maintained turf areas by this amount will bring the water demand into an approximate balance with the local groundwater recharge conditions, thereby reducing the potential effect on groundwater levels by an equivalent amount. Reduction of the amount of turf will also reduce the fertilizer requirements and the associated groundwater-nitrate impact of the project.
- B. While the information currently available indicates that the project could substantially impact groundwater levels, a detailed groundwater investigation shall be used to refine the mitigation (i.e., reduce on-site water use by approximately 50 percent) described above. The project proponent shall complete a much more detailed groundwater investigation to confirm that the

proposed pumping of groundwater for golf course irrigation would not cause a significant decline in the water table at neighboring properties. The scope of this investigation will need to include an inventory of existing water wells, pumping rates, water level fluctuations and gradients, aquifer characteristics (e.g., transmissivity and storativity), and recharge rates. From this information, a groundwater budget and hydraulic model shall be developed to estimate the change in groundwater conditions caused by the pumping of groundwater for golf course irrigation. The scope of work and the results of this investigation shall be subject to review and approval by the Santa Clara Valley Water District.

Once the groundwater investigation is complete and approved by the Santa Clara Valley Water District and the City of Morgan Hill, the water usage on the project site shall be adjusted based on the results of the investigation (i.e., either increased or decreased). The groundwater investigation must be completed and approved by the Santa Clara Water District and the City of Morgan Hill within 6 months to avoid interim impacts to the groundwater basin and neighboring properties from the continued excessive use of water on the project site. If the investigation is not completed and approved within 6 months, then water use on the project site shall be reduced by approximately 50 percent, as described above. The Applicant may be required by the City and/or the Water District in the future to conduct additional monitoring and to take corrective action, if necessary, to ensure that no groundwater depletion is occurring.

C. Subject to further research, the use of recycled water to irrigate the golf course could be implemented to reduce the use of groundwater.

____ 13. According to the City of Morgan Hill Noise Ordinance, noise-generating construction activities are defined as including, but are not limited to, excavation, grading, paving, demolition, construction, alteration or repair of any building site, street, or highway, delivery or removal of construction material to a site or movement of construction materials on a site. These construction activities are prohibited other than between the hours of 7:00 AM to 8:00 PM, Monday through Friday, and between the hours of 9:00 AM and 6:00 PM on Saturday. Construction activities may not occur on Sundays or federal holidays.

____ 14. Construction operations shall use available noise suppression devices and techniques, and equipment shall be properly muffled and maintained.

____ 15. The BAAQMD has prepared a list of feasible construction dust control measures that can reduce construction impacts to a level that is less than significant. The following construction practices shall reduce construction related air quality impacts to a less than significant level.

A. Dust-proof chutes shall be used for loading construction debris onto trucks.

B. Watering shall be used to control dust generation during demolition of structures and break-up of pavement.

C. Cover all trucks hauling demolition debris from the site.

D. Water all active construction areas at least twice daily.

E. Watering or covering of stockpiles of debris, soil, sand or other materials that can be blown by the wind.

- F. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
- G. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking, and staging areas at construction sites.
- H. Sweep daily (preferably with water sweepers) all paved access road, parking areas and staging areas at construction sites.
- I. Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.
- J. Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.
- K. enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- L. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- M. Replant vegetation in disturbed areas as quickly as possible.

_____ 16. Odor Impacts

- A. Existing and future grass clippings shall be collected and either: (1) composted on-site at a location and in a manner to be specifically addressed in the Planned Development Rezoning Permit; or (2) hauled to an off-site recycling facility; or (3) left on the golf course to compost "in situ".

_____ 17. Special-Status Plant Species (Serpentine) Habitat

A. Since most of the impacts have already occurred, establishment of a conservation easement is the only mitigation measure available that could reduce this impact to a less than significant level. As recommended by the USFWS in the letter of July 15, 2003 (Appendix C of this EIR), the following mitigation measure shall reduce project impacts to serpentine habitat to a less than significant level:

- 1. In order to replace the serpentine habitat lost with equivalent habitat, purchase 51 acres of currently unprotected serpentine habitat and fund its management as habitat in perpetuity.

_____ 18. Riparian Areas

A. Since the construction impacts within the riparian corridor have already occurred, the only mitigation available is to replace the riparian habitat removed. The following mitigation measure was identified to mitigate impacts to the riparian habitat removed:

- 1. The riparian habitat that was lost due to grading or other development activities within areas of canopy contiguous with riparian habitat shall be replaced along this same drainage at a ratio of 3:1. Pre-grading conditions on the site shall be determined by City Staff through the use of historic aerial photos and other historical documentation of the project site.

_____ 19. Ordinance-Size Trees

A. Since most of the impacts have already occurred, replacement is the only mitigation measure available that would reduce this impact to a less than significant level. The numerous trees planted on the golf course are primarily non-native, and do not offer replacement habitat values.

B. The following steps shall be taken to mitigate for lost ordinance-size trees:

1. Appropriate on-site locations for new trees shall be identified by a qualified botanist or arborist. The proposed riparian setback area offers a potentially suitable site for the planting of native tree species. Mitigation for the removal of non-native, ordinance species shall be incorporated into the landscaping plan for the proposed development or they shall also be mitigated for with native plantings in the riparian setback area; and
2. Lost native trees greater than six inches in diameter shall be replaced at a 5:1 ratio*. This ratio shall be necessary to compensate for replacement trees that do not survive, and for the habitat values lost while replaced trees are maturing. Planting stock shall be collected locally. Planting shall be conducted from November to January using small nursery stock. The replacement trees shall be installed in an environment suitable for their establishment and growth. These trees shall be irrigated and maintained for a period of not less than three years. The mitigation site shall be protected from future disturbance and the restoration effort shall be monitored for five years. Annual status reports shall be provided to the Director of Planning. The size of the trees lost shall be estimated by City Staff from aerial photographs and other historic documentation. The equivalent number and type of trees removed and the number, type, size, and health of the new trees planted on the project site will be evaluated to determine if the equivalent value of the trees removed is fully mitigated by the trees planted on the project site. If the value of the trees removed from the project site is not fully mitigated by the trees planted, additional native species trees will be planted on the project site, as determined by City Staff.

_____ 20. California Red-legged Frog Habitat/Aquatic Habitat

Appropriate mitigation shall include either improving the potential on-site breeding habitat (Mitigation measures 1, 2, 3 and 5 below) or providing an off-site conservation easement for California red-legged frogs (Mitigation measures 2, 3, 4 and 5 below).

- A. Mitigation 1 - Compensation by Establishment of On-site Breeding Areas - The project shall restore and expand the presumed former breeding pond and broaden the band of setbacks for the creek and the potential breeding ponds. The broadening of the setback surrounding the creek and potential breeding ponds will increase the potential for adult and juvenile red-legged frogs to disperse and forage along a corridor between the creek and the southeastern and the westernmost ponds. Because approximately three acres of potential breeding ponds were lost, at least nine acres of breeding ponds shall be restored for red-legged frog habitat. Potential breeding habitat shall include emergent aquatic vegetation to provide substrates for egg laying and associated upland habitat for foraging. The upland habitat shall be a buffer (an undisturbed area that protects habitat from human activities) of 200 feet that is maintained from the water's edge of individual breeding ponds and from the centerline of the creek. No human disturbance, landscaping, irrigation, turf areas or lighting shall be placed within the buffer area. No vehicles or other equipment including power lawn mowers shall operate within the buffer zone. Additionally, if any nocturnal maintenance activities occur on the site, an exclusion fence shall be

installed and maintained to avoid "take" of red-legged frogs from vehicular activities. Additionally, Mitigation 2 and 3 shall be implemented.

B. Mitigation 2 - Manage Non-Native Predator Species (primarily the bullfrog) - Bullfrogs are non-native predators that reduce the long-term viability of a red-legged frog population. Although no bullfrogs or other non-native predators were detected on the project site, a non-native predator management plan that operates for the life of the golf course operation shall be implemented. The main components of this plan are to: 1) monitor all ponds for bullfrogs and other non-native predators on an annual basis, and 2) draw down any ponds that contain bullfrogs for two to three weeks in late September/early October. The timing of draw down shall be phased to ensure that red-legged frogs will continue to have available suitable wet areas. This draining of the ponds disrupts the two-year development cycle of the bullfrog and should substantially reduce or eliminate successful reproduction by bullfrogs in this area.

C. Mitigation 3 - Maintain Water Quality of Breeding Ponds - Water quality shall be monitored for the duration of the golf course operation by qualified personnel to ensure that golf course run-off does not impact breeding habitat for the red-legged frog. The water quality parameters to be sampled shall be in accordance with monitoring requirements established by the Regional Water Quality Control Board and, at a minimum, shall include nitrate, ammonia, total kjeldahl nitrogen, total dissolved solids, oil and grease (parking lot runoff only), and all landscaping chemicals used by the golf course. Emergent vegetation (e.g. cattails) established around pond edges will provide at least some biological filtering of run-off water and reduce the inflow of this run-off. All parking lot drains and all subdrains beneath tees and greens that discharge into the ponds shall include filtration or other treatment measures to minimize the potential for direct discharge of golf course chemicals or other surface runoff contaminants.

D. Mitigation 4 - Provide a Conservation Easement - The project proponent shall establish a conservation easement for red-legged frogs at a "to-be-determined" location. The final configuration of the easement (at least 51.2 acres of suitable red-legged frog habitat) will depend on the final mitigation design, which will be developed in conjunction with the USFWS. This easement will be in perpetuity. A conservation easement may be purchased as a part of a larger mitigation bank.

As stated in the July 15, 2003 letter from the USFWS, the 35 acres of serpentine habitat located in Kirby Canyon is of exceptional quality. If after evaluation the City of Morgan Hill agrees with the USFWS that this 35 acres of replacement habitat is equivalent to the mitigation requirement of 51 acres of serpentine habitat due to exceptional quality, and also provides 35 acres of red-legged frog habitat, then only 16.2 additional acres of currently unprotected red-legged frog habitat will need to be purchased and funded for management as habitat in perpetuity.

E. Mitigation 5 - Compliance with Resource Agencies - The project proponent shall formally consult with the USFWS to obtain a biological opinion that the continued operation of the golf course will not jeopardize the continued existence of the species and then be issued an incidental take permit. This formal consultation can take the form of a Section 7 (via a Federal action) or a Section 10 (Habitat Conservation Plan). Discussions with the USFWS will determine the appropriate vehicle to process this request.

____ 21. California Tiger Salamander Aestivation/Breeding Habitat

Appropriate mitigation shall include either improving the potential on-site aestivation habitat and the breeding habitat on the westernmost ponds (Mitigation 1, 2, and 3) in order to expand the existing tiger salamander population or providing an off-site conservation easement for California tiger salamanders (Mitigation 4).

- A. Mitigation 1 - Compensation by Establishment of On-site Breeding and Aestivation Habitat - The project shall restore and expand the presumed former breeding ponds and broaden the band of setbacks for the potential breeding ponds. The broadening of the setback surrounding the potential breeding ponds will increase the potential for adult and juvenile tiger salamanders to disperse and forage around the breeding ponds. Because approximately three acres of potential breeding ponds were lost, at least three acres of breeding ponds shall be restored for tiger salamander breeding habitat. Potential upland aestivation habitat shall be provided around the breeding ponds. The upland habitat shall be a buffer (an undisturbed area that protects habitat from human activities) of 200 feet that is maintained from the water's edge of individual breeding ponds. Additionally, large woody debris and/or stones shall be placed within this buffer to encourage burrow construction by ground squirrels and/or gophers. No rodenticides shall be used to kill any ground squirrels and/or gophers in the buffer area. No human disturbance, landscaping, irrigation, turf areas or lighting shall be placed within the buffer area. No vehicles or other equipment including lawn mowers shall operate within the buffer zone. If any nocturnal maintenance activities occur on the site, an exclusion fence shall be installed and maintained to avoid "take" of tiger salamanders from vehicular activities. Additionally, Mitigation 2 and 3 shall be implemented.
- B. Mitigation 2 - Manage Non-Native Predator Species (primarily the bullfrog) - Bullfrogs are non-native predators that reduce the long-term viability of a California tiger salamander population. Although no bullfrogs or other non-native predators were detected on the project site, a non-native predator management plan that operates for the life of the golf course operation shall be implemented. The main components of this plan are to: 1) monitor all ponds for bullfrogs and other non-native predators on an annual basis, and 2) draw down any ponds that contain bullfrogs for two to three weeks in late September/early October. The timing of drawn down will be phased to ensure that tiger salamanders will continue to have available suitable wet areas. This draining of the ponds disrupts the two-year development cycle of the bullfrog and should substantially reduce or eliminate successful reproduction by bullfrogs on the site.
- C. Mitigation 3 - Maintain Water Quality of Breeding Ponds - Water quality shall be monitored for the duration of the golf course operation by qualified personnel to ensure that golf course run-off does not impact breeding habitat for the California tiger salamander. The water quality parameters to be sampled shall be in accordance with monitoring requirements established by the Regional Water Quality Control Board and, at a minimum, shall include nitrate, ammonia, total kjeldahl nitrogen, total dissolved solids, oil and grease (parking lot runoff only), and all landscaping chemicals used by the golf course. Emergent vegetation (e.g. cattails) established around pond edges will provide at least some biological filtering of run-off water and reduce the inflow of this run-off. All parking lot drains and all subdrains beneath tees and greens that discharge into the ponds shall include filtration or other treatment measures to minimize the potential for direct discharge of golf course chemicals or other surface runoff contaminants.
- D. Mitigation 4 - Conservation Easement for California Tiger Salamanders - The project proponent shall establish a conservation easement for tiger salamanders at a "to-be-determined" location. The final configuration of the easement (at least three acres of ponds) and associated upland

aestivation habitat will depend on the final mitigation design, which will be developed in conjunction with the CDFG. This easement will be in perpetuity. A conservation easement may be purchased as a part of a larger mitigation bank. Otherwise, the owner(s) may work with a land trust, preferably in the Mt. Hamilton Range Mountains to the east, or the owner(s) shall develop their own off-site mitigation easement. Any and all easements shall have a legal commitment, be guaranteed management for the purposes of maintaining a California tiger salamander population, and be approved by the CDFG. Consideration will be given to crediting on-site ponds for tiger salamander habitat, if they meet the relevant criteria.

- ____ 22. A "non-renewal notice" shall be filed by the City for the existing Williamson Act contract that is currently in force on the project site.

Other Conditions:

- ____ 23. The golf course shall be open for private use only from April 16th to September 30th and play on the golf course shall be limited to a maximum of 36 rounds of golf per day, seven days per week, from sunrise to sunset. Players shall not be allowed to use golf carts. Golf carts shall be used on the golf course for maintenance purposes only.
- ____ 24. As part of the Site, Architectural and Landscape application, and prior to the issuance of building permits for this project, the applicant shall submit a detailed landscape plan for review by the City. It shall be in the City's purview to determine if the row of trees along Foothill Avenue must be removed or diminished, or alternatively, that the trees are an appropriate part of the overall use of the site and can remain.
- ____ 25. The existing drainage conduit located at Maple Avenue (identified in Exhibit 1 attached hereto) shall be redesigned and resized to prevent localized flooding, to the satisfaction of the City Engineer, prior to the issuance of building permits.
- ____ 26. The existing culverts located at the private driveways downstream from the project site (identified in Exhibit 2 attached hereto) shall be resized to prevent localized flooding to the properties to the satisfaction of the City Engineer, prior to the issuance of building permits. The applicant shall coordinate all improvements with the County of Santa Clara and shall subject to property owner permission to enter the adjacent property.
- ____ 27. Fertilizers and other agricultural chemicals shall be applied by means other than through the irrigation spray system to avoid generation of noxious odors to neighboring residences.
- ____ 28. Any water tank required for fire suppression purposes shall be sited at a low elevation on the project site, to minimize impacts to the area view shed. Such tank shall be located adjacent to the main building areas and shall be visually screened by trees and other vegetation, to the satisfaction of the City.

- _____ 29. Defense and indemnity. Applicant agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, injuries, costs and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed against City by reason of its approval of Planned Unit Development (PUD) Zoning Amendment for this project. In addition, applicant shall pay all pre-tender litigation costs incurred on behalf of the City including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals, but shall not be required to pay any litigation from the City. However, applicant shall continue to pay reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted. The undersigned hereby represents that they are fully empowered by the applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by applicant to be bound by such conditions.
- _____ 30. Allowance of continued operation of the golf course shall be dependent on the applicant's timely compliance with the requirements of the MMRP and prompt payments of all fees necessary to defray the City's expense in reviewing and monitoring compliance with the MMRP, including fees to cover City staff time, out of pocket expenses and administrative charges, and the fees of any consultants retained by the City to evaluate compliance with the MMRP or to oversee implementation of the MMRP in whole or in part. The City may from time to time require payment of estimated fees and expenses in advance of the performance of work by City Staff or consultants, and shall otherwise submit invoices to the Applicant for such fees and expenses as they are incurred or on a periodic basis. Such invoices shall be paid by the Applicant within 30 days of the date of the invoice. The Applicant's failure to pay invoices in a timely manner may result in the City's suspension of the Applicant's right to operate the golf course, the delay or denial of permits sought by the Applicant for construction of additional facilities contemplated in the PUD zoning, and/or revocation of the zoning approval.

⌘AFFIDAVIT⌘

I, **STEPHEN SORENSON**, on behalf of the applicant, hereby agree to accept and abide by the terms and conditions specified in Ordinance No. 1687, New Series and Exhibit C, "Conditions of Approval, Including Mitigation Measures Not Presently Incorporated into the Proposed Project". I represent and warrant that I have the authority on behalf of the applicant to execute this document.

STEPHEN SORENSON, On Behalf of Applicant

Date: _____



CITY COUNCIL STAFF REPORT

MEETING DATE: JULY 21, 2004

REPORT OF THE COUNCIL SUBCOMMITTEE ON THE LIBRARY PROJECT SELECTION

Agenda Item # 21

**Prepared /Submitted
By:**

City Manager

RECOMMENDED ACTIONS:

- 1. Continue discussion of the recommendations of the Council Subcommittee;**
- 2. Receive the analysis and findings for considering an increase in the Library Development Impact fee; and**
- 3. Direct staff to set August 18, 2004 as a public hearing for consideration of increased library development impact fees of \$750 single family units and \$614 multiple family units;**
- 4. Consider the Mayor's suggestion to delay the site location decision and instead place the decision for the location of the library as an advisory vote measure on the November 2, 2004 election ballot and immediately draft a resolution for final approval at the July 28 Council meeting; and**
- 5. Provide Council Direction.**

EXECUTIVE SUMMARY:

The Council Subcommittee of Mayor Kennedy and Council member Tate presented the attached report at the June 23, 2004 Council meeting on the proposed two site options, the new Civic Center project and the Downtown property. At the meeting, Council authorized the City Manager to prepare appropriate analysis and findings for Council consideration on an increase in the Library Development Impact Fee and to have the City Manager analyze the alternative project management model and prepare recommendations for Council to consider obtaining the services of a qualified construction management firm and architect as listed under the Implementation Plan in the attached report.

Mayor Kennedy has requested Council consider deferring the site location decision instead placing an advisory measure to the November 2, 2004 ballot (attachment A). Due to timeline constraints, Council will need to provide staff with direction tonight to begin immediately to draft language for consideration on the July 28 Council Meeting. A draft resolution is listed as attachment B.

In review of the financing strategy proposed, there are enough funds to develop either project. In order to close the financial gap, the following recommendation is to increase the Development Impact Fee for libraries by three to increase the annual revenue from \$60,000 to \$180,000 annually. The analysis and findings Council requested on June 23 are included in this report as attachment C and recommend an increase in the library development impact fees to \$750 single family units and \$614 multiple family units.

Further financing recommendations include: County Library JPA lease payments of \$75,000 per year and increase the RDA allocation by \$7.0 million by shifting and/or deferring specific flood control projects to the Local Storm Drain Fund. This will require another funding source if PL566 project goes forward and may possibly be a future RDA extension project. The Civic Center parcel will have to be sold if the library project is moved downtown and possibly be used for low and moderate income housing. The parcel was appraised at \$1.9million.

The Subcommittee's report and recommendation is attached.

FISCAL IMPACT: The Report recommends a financing strategy for building a new library.



REDEVELOPMENT AGENCY MEETING

DATE: *July 21, 2004*

EXTENSION OF EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT (ERN) WITH EL TORO BREWING

Agenda Item # 22

Approved By:

BAHS Director

Submitted By:

Executive Director

RECOMMENDED ACTION(S): Authorize the Executive Director to prepare and negotiate a 90 day extension to the ERN with El Toro Brewing, subject to Agency General Counsel review.

EXECUTIVE SUMMARY: On January 21, 2004, the Redevelopment Agency (Agency) selected El Toro Brewing Company (El Toro) as the developer for a restaurant/brew pub in the police building at 17605 Monterey Road. In March 2004, the Agency approved key milestones for performance and established baseline business terms for the ERN. El Toro executed the ERN on March 17, 2004. The ERN expired July 15, 2004. Attachment A contains the schedule of performance for the ERN. The comments in bold on the schedule represent the status of the information requested. The key item that El Toro was unable to comply with during the 120 day period was obtaining a loan commitment from a commercial lender. El Toro indicates that the recent "restructuring" at Heritage Commerce Bank has delayed its loan application and will require El Toro to begin from scratch (See Attachment B- letter). El Toro has begun to approach other banks for financing.

El Toro is requesting and the Council's Economic Development Subcommittee (Councilmembers Carr and Tate who previously worked on this item) is recommending a 90 day extension of the ERN period. This extension would be retroactive to the end of the previous ERN. The new deadline is now October 12, 2004. This will allow El Toro to continue to pursue its efforts to develop a brewpub. The extension does not increase the overall time frame as the Disposition and Development Agreement (DDA) always envisioned the developer would need another 120 days to close escrow for a total of 240 days (120 day ERN period plus 120 day DDA period). During this 120 day period, the developer would complete the design approval process, finalize construction estimates and its contract with the general contractor, and submit for building plan check. The result of the extension is that the DDA will require El Toro to close escrow on the property within 30 days as opposed to 120 days of the execution of the DDA.

The ED Subcommittee is recommending the following conditions of the ERN extension:

- The \$20,000 good faith deposit will become a non-refundable deposit applied toward the purchase price. In the event El Toro cannot obtain construction financing, El Toro may meet with the Agency to discuss other options before the Agency can terminate the ERN. We did request an additional good faith deposit, but El Toro indicates that any additional good faith deposits would adversely impact their cash flow needed to complete the design and construction drawings for the project in a timely manner. El Toro states it is a small family run business and unanticipated costs such as an additional good faith deposit will tax its limited resources.
- El Toro must state in writing, as a condition of the extension, that its due diligence on the site and environmental conditions have been completed and that the property is accepted "as is" and that the City/Agency is indemnified against any future discoveries.
- The purchase price is \$650,000 due at the close of escrow. Escrow will close 30 days after the execution of the DDA.
- El Toro will endeavor to obtain ARB approval by August 20, 2004 and submit for building plan check by Sept. 30, 2004. This timeframe is within the ERN's 90 day period.
- El Toro will begin discussions with other lenders and will obtain a preliminary commitment letter from a lender to fund construction within the ERN's first 45 days. Within 90 days, El Toro must demonstrate that funds from the lender are irrevocably committed, subject to reasonable commercial exceptions.

FISCAL IMPACT: None at this time.

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